

Noblit Brothers, Inc. and AMA Manufacturing Company and Teamsters Union Local 115, affiliated with International Brotherhood of Teamsters, AFL-CIO.¹ Cases 4-CA-15306-1, 4-CA-15343, 4-CA-15343-3, 4-CA-15429, and 4-CA-15705

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY, OVIATT, AND RAUDABAUGH

On September 18, 1987, Administrative Law Judge John H. West issued the attached decision. The Charging Party,² the General Counsel, and the Respondent filed exceptions and supporting briefs and the Respondent filed briefs in opposition to both the General Counsel's and the Charging Party's briefs.³

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,⁴ and conclusions, to modify the remedy,⁵ and to adopt the recommended Order as modified.

1. We agree with the judge that the allegation of the Respondent's antiunion animus is without merit. We also agree with the judge that no bargaining obligation attached to decisions involving "where is my order" work, accounts/billing questions, and telephone sales work. The reduction or transfer of that work, which had never been exclusively performed by the Noblit unit employees, was the result of a change in the way the Respondent marketed its products, as explained in more detail below with reference to telephone sales work. Accordingly, like the judge, we find no merit to the General Counsel's allegation that the Respondent

violated Section 8(a)(5) of the Act by failing to bargain in this respect.

The Respondent and the Union had maintained a long-term collective-bargaining relationship covering two separate units in the Respondent's builders' hardware manufacturing and wholesale distributing operation. One unit consisted of AMA production and maintenance employees and the other consisted of Noblit warehouse, showroom, and clerical employees.⁶ The contracts expired on September 1, 1985.⁷

Telephone sales work was done not only by the four showroom employees who were in the unit but also by Noblit customer service representatives who were not in the unit. Showroom employees also waited on walk-in customers and will-call customers (those who telephoned orders in advance of personal pick up) and assisted in the warehouse as needed.

On March 25, Moshe Meidar became the new owner and president of the Respondent. He continued the streamlining of the Respondent's operation commenced by his predecessor. Computers, which had begun to be installed the previous December, were increased in number. More sophisticated telephone equipment was purchased, and several toll-free numbers were established. In addition, the Respondent formed a telemarketing division which for the first time would initiate sales. Each telemarketer would be assigned to a designated geographical area of the country and would be responsible both for servicing, and increasing the business from, existing customer accounts and for pursuing leads to add new accounts. These duties would require telemarketers to have a complete knowledge of inventory (including new products to be promoted), to conduct market research, and to have the motivation and personality of a good salesperson. This job was, therefore, quite different from the order-taking and question-answering functions that constituted the telephone work which had previously been performed both by the Noblit unit showroom employees and nonunit customer service representatives.

At the same time it was thus expanding and modifying telephone sales work, the Respondent eliminated the walk-in sales function of the showroom and reduced the face-to-face customer contact aspect of the operation to a will-call counter only, i.e., the servicing of customers who had previously called in orders.⁸ Concurrent with this reduction of showroom functions, the Respondent transferred two of the four showroom employees to unit positions in its warehouse operation (where, as noted above, showroom employees had oc-

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² The Respondent's assertion that the Charging Party's exceptions and brief are untimely is without merit. They were received by the Board on the due date.

³ The Respondent's motion for limited reopening of the record is denied. The evidence at issue, the Respondent's security contract with Boyd Security Systems, Inc., and Respondent's advertisements for replacements in advance of the strike, are already part of the record.

⁴ The Respondent and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. And this is so although we do not rely on the film evidence in G.C. Exh. 100 as did the judge with respect to discrediting John Munro and Ramon Ramos in certain respects. Because the judge's disposition of the issues in question stands without reliance on the film, this does not affect the result.

⁵ Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

⁶ Specifically: warehousemen, shipper-received, forklift operator, janitor, truckdriver, store salesmen, clerk, file clerk, purchasing clerk, clerk-typist, stenographer, keypunch operator, switchboard operator.

⁷ All dates are in 1985 unless otherwise indicated.

⁸ No unfair labor practice charge was filed concerning the reduction of the Respondent's showroom to a will-call operation only.

casionally helped out in the past when the need arose). One of the two transferred employees was subsequently laid off from the warehouse, apparently after a decline in warehouse work. The two remaining showroom employees who worked the new pickup counter no longer handled incoming telephone sales calls.

We find the record inconclusive as to whether any unit loss of telephone sales work was the direct consequence of the Respondent's reduction of showroom functions or of its institution of telemarketing. Whether either or both of those actions produced such a loss, however, we discern no decision by the Respondent to which a bargaining obligation pursuant to *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), would attach.

Both the change in showroom functions and the development of the telemarketing operation, with its system of toll-free numbers and computerized record-keeping, reflected a redirection of the Respondent's enterprise—a basic change in the manner in which it related to its customers. Customers were grouped in designated geographical areas assigned to individual telemarketers. Servicing those accounts was quite unlike the random order-taking in which unit showroom employees had formerly engaged. A logical result of this change would be a decline in the number of telephone orders or inquiries directed to employees who had no on-going relationship with the customer who called.

This decision to change the way the Respondent dealt with its customers by telephone is in some way akin to “choice of advertising and promotion,” an example of the first type of management decision discussed by Justice Stewart in *Fibreboard Corp. v. NLRB*, 379 U.S. 203 (1964), as recited in *First National Maintenance*, supra at 676–677. But because the decision has also arguably had some impact on the jobs of the warehouse employees, it is also akin to Justice Stewart's third type—a decision which may have had a direct impact on employment but which was focused on matters “wholly apart from the employment relationship.” Id. at 677. Regardless of how neatly the change fits into either of these categories, however, it clearly amounts to a decision basically concerned with “the scope and direction of the enterprise” that the Court in *First National Maintenance* held was not a mandatory subject of bargaining.⁹ We therefore agree

with the judge's dismissal of the allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by transferring telephone sales work from the Noblit unit without bargaining with the Union.¹⁰

2. We agree with the judge that the strike which commenced on September 4 was a lawful economic strike, and not one aimed at forcing a change in unit scope, even though the Union was concerned about the nonunit telemarketers. As early as April, employees had expressed concern to their union representatives about the Respondent's changes in its operation and loss of bargaining unit work. There was some discussion of these issues between the Respondent and the Union in anticipation of the contract's termination on September 1 even before negotiations commenced. The Union raised the issue of telemarketers performing bargaining unit work at the negotiating sessions held on August 20, 27, and 29. There was also discussion of both the Union's and the Respondent's contract proposals and the future of the Respondent's separate manufacturing facility (AMA), which the Respondent claimed was financially doomed, where the Union had maintained a separate contract.

On August 30, the Union conducted a meeting at which employees voted unanimously to strike commencing on September 4. The evidence indicates that employees were concerned about the loss of their work. Union Vice President Sheahan testified that Union President Morris told employees that the Respondent's contract proposals were unacceptable, citing binding arbitration, drug testing, limiting the authority of stewards, and offering only 15 cent-per-hour pay raises. Morris also said that the Respondent had telemarketers doing bargaining unit work and was refusing to negotiate about it and that the Union's view

internal changes, e.g., to have employees doing essentially the same work with more advanced equipment or variations in work methods, amounts to a change in the scope and direction of the enterprise. As noted above, the Respondent restructured its business—and, as a result, the work itself—in a much more significant way.

¹⁰ Even as to entrepreneurial decisions of the kind at issue here, an employer has an obligation to give the union notice and an opportunity to bargain over the effects of the change reflected in the decision. *First National Maintenance*, supra, 452 U.S. at 681–682. In this regard, we note that the Charging Party Union has excepted to the judge's finding that the Union failed to request effects bargaining and that therefore the Respondent did not violate the Act in that respect. We reject the exception because the record shows that the Union's demands for bargaining were aimed at seeking reversal of the Respondent's decision regarding the nonbargainable change—i.e., they consisted of protests over the alleged removal of unit work (which, as explained above, was inextricably bound up with the change in the scope and direction of the enterprise), rather than a request to bargain over possible adjustments in the employees' terms and conditions in the wake of that change. We also note that, in their briefs on exceptions, both the Union and the General Counsel describe the Union's efforts to preserve its bargaining rights in terms of what we have defined as the entrepreneurial decision rather than its effects.

⁹ Our decision is not inconsistent with *Dubuque Packing Co.*, 303 NLRB 386 (1991). In that case we explained that we will engage in a presumption-rebutting analysis to determine whether relocating unit work is a mandatory subject of bargaining only after the General Counsel has made a threshold showing that the work has remained essentially the same. In *Dubuque* we found employees still doing the same work in the new plant. Here the work has been transformed because the Respondent changed its form of business. We emphasize, however, that nothing we say here should be taken as indicating that we will find that a decision to make substantially

was that “not negotiating with us on that bargaining unit work concern was losing the jobs. We wanted the work back.” Similar statements were made by employees Shields, Dominguez, Tumolo, and Rosato.¹¹

A variety of economic concerns were also reflected in the Respondent’s letter distributed to employees on the same date as the strike vote. The Respondent claimed that two reasons of “major importance” accounting for the “deadlock” in negotiations between the Respondent and the Union were the high costs of the Union’s demands and the failure of the Union to deal thoroughly with the future of AMA and its employees.

On September 3 the parties held another negotiating session. At that session, the Respondent alleges that the Union both demanded that telemarketers be in the unit and declined to discuss other issues when the Respondent refused this demand. The Respondent also alleges that it was the Union’s intransigence on this issue that prompted the Respondent to terminate the negotiations. The Respondent argues that therefore the Union’s subsequent strike was a violation of Section 8(b)(3) because it constituted economic pressure in support of the Union’s insistence to impasse on a change in the scope of the unit.

In agreeing with the judge’s holding that the strike was not illegal, we (e.g., the arbitration provision, drug testing, the inadequacy of the wage offer) and on what they believed was the loss of unit work to the telemarketers.¹² The latter was an issue that had concerned them for some time; but there is no evidence compelling an inference that this concern took the form of a determination to expand the unit to encompass the telemarketers as opposed to a determination to retrieve work for members of the bargaining unit.¹³ Because the strike vote was taken on August 30 and it was 4 days later that the parties met for the bargaining session in which the Respondent’s contends the Union in-

sisted to impasse on a change in the scope of the unit, statements made by the Union in that bargaining session are not dispositive of the cause of the strike.

In any event, even viewing the strike in light of statements by union representatives on September 3, we do not find that the Union clearly conditioned further bargaining on a change in unit scope. Union Vice President Sheahan testified that on September 3 the Union took the following position:

[If telemarketers] are doing Local 115 work, then they come into the bargaining unit. We are not going to have these people doing our work, and they are not going to be in the Union. If they are going to create this classification, telemarketing, and they are going to be doing Teamster Local 115 work, then we want to negotiate about that . . . we have got to get this straightened out, either give us back the work, or those people who are doing that work have got to be members of the Union.

A fair reading of this testimony is that the Union was suggesting an expansion of the unit as one option and, as another, the return to the unit of what it believed was the unit employees’ work. The first option is a permissive—not an illegal—subject of bargaining, and the inclusion of the second option makes it clear that the first was not being insisted upon. Finally, we are not persuaded that the parties actually reached impasse on any subject at the September 3 session. The Union’s “intransigence” may have been rhetorical. In its hasty departure from the negotiating session on that date, the Respondent did not seek to verify that the Union truly had foreclosed discussing the various other issues which were still unresolved between the parties.

Under all these circumstances, we cannot find that the Union bargained to impasse over a nonmandatory subject and that the strike thereby violated Section 8(b)(3).¹⁴ Rather, we find that, on September 4, the Union commenced a lawful economic strike.

3. We agree with the judge’s finding that Meidar discharged all the strikers on September 26, 1985, and thereby converted an economic strike to an unfair labor practice strike. However, the judge incorrectly ran the discharged strikers’ reinstatement and backpay rights from the Union’s October 25 unconditional offer to return to work rather than from the September 26 unlawful discharge. The judge should have applied the remedy as described in *Abilities & Goodwill*, 241 NLRB 27 (1979).¹⁵

¹¹ Shields: “[T]elemarketers were coming in and doing our work”; Dominguez: “[Union Representative Morris] wanted telemarketers, the work. Our work in the bargaining unit, our work back”; Tumolo: “The telemarketers were performing bargaining unit work”; Rosato: “[T]here were telemarketers there doing Union work, taking jobs from Union people.” Only employee Rosato expressly denied that the Respondent’s contract proposals were discussed at the August 30 meeting; and employee Lazarus testified that “the main thing” was the Respondent’s wanting “to change the whole existing contract that we had . . . [d]o away with our seniority.” Union Vice President Sheahan’s cited testimony corroborates this dual focus of the meeting as do the Union’s notes detailing the meeting. We therefore find, by a preponderance of the evidence, that the Union discussed the Respondent’s contract proposals as well as the telemarketers at the August 30 meeting.

¹² We note that a police report issued on September 3, the date of the alleged illegal impasse, indicates that “the reason for the dispute is that Noblit wants to cut wages of the employees from \$11.00 to \$6.00.”

¹³ Compare, *Electrical Workers IBEW Local 3 (Nixdorf Computer)*, 252 NLRB 539, 542 (1980).

¹⁴ We note that the Regional Director dismissed the Respondent’s 8(b)(3) charge with respect to this issue.

¹⁵ Warren Nash must therefore be included in the Respondent’s obligation to provide reinstatement and backpay. The Respondent incurs a backpay obligation for Nash from his September 26 unlawful

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ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Noblit Brothers, Inc. and AMA Manufacturing Company, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

1. Substitute the following for paragraph 2(b) and reletter the subsequent paragraphs accordingly.

“(b) Offer to employees listed in the Appendix immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired after the date of their unlawful discharge.

“(c) Make the employees listed in the Appendix whole for any loss of earnings which they may have suffered by virtue of the discrimination against them by paying them an amount equal to what they would have earned from the date of discharge to the date that they are offered reinstatement. Backpay shall be computed in the manner set forth in the remedy section of this decision.”

2. Substitute the attached notice for that of the administrative law judge.

MEMBER RAUDABAUGH, concurring.

I concur in all of the results that my colleagues have reached. However, with respect to the result that the Respondent's decision involved herein was not a mandatory subject of bargaining, I have a somewhat different rationale.

In my view, the Respondent's decision falls into category 3 of the types of management decisions discussed in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). That is, the decision had a direct impact on employment conditions but its sole focus was the economic profitability of the enterprise. In *First National Maintenance*, the Supreme Court applied the following test to determine whether the category 3 decision involved therein was a mandatory subject of bargaining:

[I]n view of an employer's need for unencumbered decision-making, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-

management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business.

This test was further amplified in *Dubuque Packing Co.*, 303 NLRB 386 (1991), a case involving the category 3 decision of relocating a plant. The Board applied the following test to determine whether the decision is a mandatory subject of bargaining:

Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant, establishing that the work performed at the former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate.

I would apply the *Dubuque* test in the instant case. Applying it, I assume arguendo that the General Counsel has met his initial burden of showing that the Respondent's decision was not a basic change in the nature of the Respondent's operation. Similarly, I assume arguendo that Respondent has not shown that the decision involved a change in the scope and direction of the enterprise. However, the evidence is clear that labor costs were not a factor in the decision, or even if they were, the Union could not have offered labor cost concessions that could have changed the decision. In this regard, I note that the decision was made in order to market products more effectively, not to achieve a labor cost savings.

Based on the above application of the *Dubuque* test, I find that the decision is not a mandatory subject and that the complaint should be dismissed in this respect.

discharge until about November 8, when Respondent lawfully notified him that he was ineligible for reinstatement.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Teamsters Union Local No. 115, a/w International Brotherhood of Teamsters, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer William Hirschman and William O'Farrell Jr. (alias John Lewis Jr.) immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net earnings, plus interest.

WE WILL, to the extent we have not already done so, offer the following individuals immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, discharging if necessary, any replacements hired after the date of their discharge:

Nash, Warren	Babiarz, Maryann
Boyle, Theresa	Barber, Shirley
Childs, Elaine	Creighton, Blanche
Costigan, Harry	Ellison, Esther
Dicksen, Ernest	Floyd, Suszanna
Domaradski, William	Goral, Margaret
Dominguez, Angela	Hart, Dolores
Tumolo, Maria	Irvin-Hicks, Lossie
Dean, Joslyn	Johnson, Lois
Nefferdork, Patrick	Kashow, Rose Marie
Smith, Terry	Kosinski, Elsie
Hurvitz, Heather	Kueny, Jeanette
Jeffries, William	Lavin, Thomas

Juhas, Andrew	Lupton, Juanita
Krzywicki, John	Mills, Everton
Lazarus, Hurley	Gershkovitz, Carl
Mayer, Alford	Green, Thomas
McDonald, Susan	Harris, George
Moore, Burton	Russikoff, Vivian
Munford, John	Quinones, Alvaro
Murphy, Rosemary	Revis, Alice
Petrella, Susanna	Robinson, David
Rafferty, Roseanne	Hepworth, Brenda
Rosato, Michael	Skea, James
Scanlon, Jane	Sutton, Mary
Sendler, Ben	Zink, James
Sharp, Melvin	Adams, Joseph
Shields, Marion	Albertson, Anna
Stasen, Dennis	Bartholemew, Raymond
Quinn, Thomas	Boruch, George

WE WILL make the striking employees whole for any loss of earnings, less any net interim earnings, plus interest, they may have suffered or may suffer by reason of our refusal to reinstate them, by payment to each of them a sum of money equal to that each normally would have earned during the period September 26, 1985, to the date they are reinstated, unless there is a lawful justification for our failure to make an offer of reinstatement.

WE WILL notify each of these discharged employee that we have removed from our files reference to the discharge and that the discharge will not be used against them in any way.

NOBLIT BROTHERS, INC. AND AMA
MANUFACTURING COMPANY

Barbara C. Joseph, Esq. and *Henry R. Protas, Esq.*, for the General Counsel.

Nicholas N. Price, Esq. (Schnader, Harrison, Segal & Lewis), of Philadelphia, Pennsylvania, for Respondents Noblit Brothers, Inc. and AMA Manufacturing Co.

Mark Blondman, Esq. and *Ronald Surkin, Esq. (Blank, Rome, Comisky & McCauley)*, of Philadelphia, Pennsylvania, for Respondent Boyd Security Systems, Inc.

Norton H. Brainard III, Esq., *William T. Josem, Esq.*, and *Richard H. Markowitz, Esq. (Markowitz and Richman)*, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. Upon charges filed by the Union in September, October, and November

¹Originally the security firm hired by Noblit Brothers, Inc. and AMA Manufacturing Co. (Employer, Respondent, or Noblit/AMA) namely, Boyd Security Systems, Inc. (Boyd) was also a Respondent herein. Additionally, upon charges filed by Noblit and AMA, a related complaint was issued against the Teamsters Union Local No. 115, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union) in Case 4-CB-5114 dated October 21, 1985. G.C. Exh. 1(k). By order dated April 4, 1986, after

Continued

1985, and in March 1986, complaints were issued in the above-entitled proceeding.

The General Counsel alleges violations, collectively, of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) in that assertedly in or about April 1985 Noblit/AMA transferred the work of taking telephone orders and answering certain customer inquiries regarding the status of orders and billing from the unit in Noblit to its unrepresented employees, without prior notice to the Union and without having afforded the Union the opportunity to negotiate and bargain as the exclusive representative of the Noblit unit; that since September 4, 1985,² the Union has been engaged in picketing at the facility in connection with a labor dispute and strike involving the employees of Noblit/AMA;³ that on September 26 Respondent unlawfully discharged specified employees⁴ because the named employees engaged in the aforementioned strike and picketing; that on September 27 Respondent unlawfully discharged William Hirschman and William O'Farrell Jr. (alias John Lewis Jr.), and on November 5 Respondent unlawfully discharged specified employees⁵ because of the union activities of Hirschman, O'Farrell, and the specified employees and because they engaged in the aforementioned strike and picketing; that on or about October 25, the Union, by letter, acting on behalf of Respondent's striking employees made unconditional offers to return to work from the aforementioned strike and Respondent failed and refused and continues to fail and refuse to reinstate specified employees;⁶ that the aforementioned strike was caused or prolonged by the above-described unlawful transfer of unit work and by the aforementioned September 26 unlawful discharges; that on or about March 20, 1986, Respondent unlawfully discharged employee Carl Gershkovitz because he engaged in the aforementioned strike and picketing.⁷ Respondent denies these allegations. Additionally Respondent states affirmative defenses which will be treated *infra*.

A hearing on these consolidated cases was held in Philadelphia, Pennsylvania, on March 31–April 4, May 5–9 and

the hearing herein opened, the Regional Director for Region 4 of the National Labor Relations Board (Board) indicated that Noblit/AMA agreed to enter a settlement stipulation concerning certain allegations in Cases 4-CA-15306-1 and 4-CA-15343, and Boyd agreed to enter into a settlement stipulation in Case 4-CA-15306-2 and the Union agreed to enter a stipulation of settlement in Case 4-CB-5114. He ordered *nunc pro tunc* that Cases 4-CA-15306-2 and 4-CB-5114 be severed from this proceeding. G.C. Exh. 1(aaa). By Decisions and Orders dated October 4, 1986, the Board approved settlement stipulations in Cases 4-CA-15306-2 and 4-CB-5114 and covering certain allegations originally contained in the above-entitled cases. G.C. Exh. 107.

² All dates are in 1985 unless otherwise stated.

³ These two companies, as discussed more fully below, constitute a single-integrated enterprise and, as noted above, a single employer.

⁴ See par. 10 of the amended third consolidated complaint dated March 17, 1986 (the complaint). At the hearing herein this paragraph was amended to delete the name of Robert Miller (Tr. 800) and to correct the spelling of Dennis Stasen's name (Tr. 900).

⁵ See par. 11(b) of the complaint.

⁶ See par. 16(a) of the complaint.

⁷ This last allegation is contained in the complaint issued in Case 4-CA-15705 dated April 11, 1986. G.C. Exh. 1(ccc). By mailgram order dated April 29, 1986, the General Counsel's motion to reopen the Government's case-in-chief, to consolidate Case 4-CA-15705 and take testimony thereon was granted. G.C. Exh. 1(ddd).

19–23, July 8–11 and 14–17, September 2, and November 20, 1986. Briefs were filed by the General Counsel, the Union, and Respondent in mid-January 1987. Upon the entire record in this proceeding,⁸ including my observation of the witnesses and their demeanor, and after considering the aforementioned briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Noblit is a Delaware corporation engaged in the wholesale distribution of builders' hardware with a facility in Philadelphia. AMA is a Pennsylvania corporation engaged in the manufacture of builders' hardware at the facility in Philadelphia mentioned in the next preceding sentence. The complaint alleges, the Respondent admits, and I find that at all times material herein, Noblit and AMA have been affiliated business enterprises with common ownership, have formulated and administered a common labor policy affecting employees of said operations, have shared a common facility, have provided services for each other, by virtue of these operations Noblit and AMA constitute a single-integrated enterprise and a single employer within the meaning of the Act, and that Noblit-AMA is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.⁹ The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Moshe Meidar became the owner and president of Noblit/AMA on March 25, 1985. The business was established in 1849. Immediately prior to Meidar, it was owned by Michael Seidelman¹⁰ and his brother-in-law Arnold Hurvitz. For almost 30 years this business has had a collective-bargaining relationship with the Union. Before 1985 there never was a strike, and no grievance ever went to arbitration. Both of the most recent separate collective-bargaining agreements with Noblitt and AMA expired on September 1, 1985. (G.C. Exhs 52 and 53, respectively.)¹¹ Witnesses, including Noblit's former vice president, Theodore Haldis, testified that the Union jealously guarded unit work.

Before March 1985 goods were purchased from Noblit either by the customer (1) telephoning in the order, (2) mailing in the order, or (3) walking off the street into Noblit's showroom. Telephone orders were taken by the store salesman in the showroom.¹² Showroom employees also waited on the

⁸ The General Counsel's unopposed motion to correct some of the errors in the transcript has been granted, and Appendix A has been omitted from publication.

⁹ In the answer to the complaint Respondent avers that AMA, for all practical purposes, permanently ceased operations in late November or early December 1985.

¹⁰ As set out more fully *infra*, Michael Seidelman continued with Noblit as a supervisor after the business was sold to Meidar.

¹¹ As here pertinent, the former lists the following classifications: stenographer, purchasing clerk, key-punch operator, switchboard operator, clerk typist, clerk, file clerk, store salesman, shipper-receiver, warehousemen, forklift operator, truckdriver, and janitor.

¹² There were four showroom employees just before Meidar purchased the business, viz, Mike Rosato, Hurley Lazarus, Kenneth Tollefsen, and Carl Gershkovitz. This department was supervised by

walk-ins, picking (removing from the stock) and packing their orders. Additionally showroom employees picked and packed "will call" orders, or, in other words, those orders for customers who telephoned in their order in advance of walking in to pick it up at the showroom. Occasionally, when business in the showroom was slow some of the showroom employees picked and packed orders for shipment by United Parcel Service, a motor carrier, or in Noblit's truck, which before Meidar purchased Noblit/AMA was used to serve the Delaware Valley area.

Incoming telephone sales orders were also handled by the customer service department. Employees in this department, customer service representatives, were not in the Union.¹³ Their other duties included: "Where's my order" telephone calls (described more fully infra), checking orders after the order processors sent them to the computer room, and fielding calls from customers regarding shortages, overcharges, and billing problems.¹⁴

A great deal of evidence was taken with respect to whether before Meidar showroom employees or customer service representatives had primary responsibility for fielding incoming telephone sales order calls and which group handled such calls only on an overflow basis. On the one hand, switchboard operator Brenda Hepworth, who is a member of the Union, testified that normally she would not send sales calls into the customer service department. Rather, she would send the sales calls to the showroom unless the caller specifically asked to speak to a specific person in customer service; that she was "told by Mike Seidelman several times if the showroom would get really jammed with people picking up orders off the street, then he would ask me to transfer the showroom calls, the sales calls into the customer service department . . . [and when] they [showroom employees] were not busy . . . then . . . [the calls] would go back into . . . [the showroom] again"; and that it was not the company practice nor did Michael Seidelman ever instruct her that she should send calls to customer service representatives and only the overflow to showroom employees. Marion Shields, who was a relief switchboard operator and a steward in the Union, testified, with respect to the involved period, that she routed incoming sales calls to the showroom; that customer service representatives only took overflow telephone calls from the store; and that "if they were busy in the store Dennis Seidelman . . . the manager . . . would call the switchboard and say please send them to customer service we are overloaded out here." All four of the above-named showroom employees testified with respect to sales calls taken before Meidar.¹⁵ Rosato testified that the showroom received a total

of between 40 and 60 sales calls a day;¹⁶ that 60 percent of his time was spent taking telephone orders; that customers in the showroom had to wait while he took the telephone order; that when the showroom was "jammed up with customers," Dennis Seidelman would have the incoming sales calls sent to customer service representatives; and that before Meidar the average order of a walk-in customer took about 10 minutes to fully process and on a busy day at least 15 to 20 such orders would be filled. Gershkovitz testified that Michael Seidelman told him that preference should always be given to phone orders and everything else, including walk-in customers, could wait; that the orders from walk-in customers were typically smaller than the phone sales orders; that about 80 percent of the phone calls he took in the showroom were phone orders; and that if he was waiting on a walk-in customer and a telephone order took him some time, he would find someone else to help the walk-in customer. Tollevson testified that he spent about 3 hours a day on the phone in the showroom; that he received 15 to 20 telephone calls a day to place orders; that a total of about 50 to 60 telephone orders were taken each business day by the 4 employees in the showroom; that Michael Seidelman stressed that showroom employees should take telephone orders before waiting on walk-in customers; that telephone orders were a major concern in that "the service for walk-in customers . . . [was] basically a . . . [courtesy] to local customers and . . . the main importance of the business was the phone calls because he [Michael Seidelman] wouldn't want a phone ringing that could be worth thousands of dollars while we're waiting on a customer for a few dollars"; and that Michael Seidelman checked to see if showroom employees were answering the phone promptly.

Haldis, who for 2 weeks in 1976 was the assistant showroom manager,¹⁷ testified that there were quite a few sales telephone calls into the showroom; that "even then" Hepworth could tell from the switchboard how busy the showroom was and the telephone calls were switched by her to customer service representatives; that at one point a light would be turned on if the showroom was too busy, which would be her signal not to send any more calls; that regarding whether the telephone sales call or the walk-ins received priority, he thought that "there may have been a general rule or something that you try and service the customer on the phone because you want to take care of them [but he did not] recall any specific rule, at least not when . . . [he] was in the showroom"; and that if a large number of people walked into the showroom at one time, the telephone calls would be diverted to customer service representatives.

On the other hand, Mike Seidelman testified that before Meidar telephone orders were taken by "[e]verybody in customer service . . . [himself] included";¹⁸ that showroom employees "answered the phone and—as an act of overflow. When everybody was busy and they were able to—if the phone rang and there was nobody to answer it, they would

Dennis Seidelman, whose brother Mike, as indicated above, was co-owner of the business. Dennis Seidelman also handled telephone orders. However, as noted infra, these individuals were not the only ones who received telephone sales orders.

¹³ They included: Tanya Kunevich, Herb Breggar, Harvey Bakely, and Sandy Feder, who was in charge of the department.

¹⁴ This type of problem will be dealt with infra. It is sufficient to indicate at this time that calls which could not be handled by the customer service representative were transferred to the appropriate department. Also, a note or a memorandum was forwarded to another department regarding such matters as problems in the accounts or price adjustments.

¹⁵ As will be treated, infra, Lazarus sponsored certain documents dealing with showroom employees' responsibilities regarding incoming sales telephone orders.

¹⁶ A review of the entries on G.C. Exh. 72, a telephone log treated more fully infra, shows that during the month of January 1985 the showroom averaged 37.7 calls a day with the number of calls going up to 58 on one day and 57 on another day.

¹⁷ Subsequently he became vice president of purchasing.

¹⁸ Specifically named were: Bob Eckstein, Arnold Hurvitz, Kunevich, Feder, Bakely, Breggar, and Mike and Dennis Seidelman. Haldis was subsequently named also.

answer it"; that "the men in the showroom with the exception of Dennis, were responsible for handling the walk-in trade into the showroom and filling their orders . . . actually going to the warehouse getting the order and making the order up. . . if the phone was ringing and nobody else could answer them, they would answer them. But it was not their primary job"; that showroom employees were expected to take orders over the telephone when everybody else was busy; that the primary responsibility of showroom personnel was "to wait on customers who walked in, the pickup customers and they picked and packed orders"; that the showroom "countermen were always interchangeable with the warehouse [personnel] [t]hat's part of our contract"; that he was not aware that switchboard operators were sending all sales calls to showroom employees and only giving the overflow to customer service representatives; that many times he told the switchboard operator that sales calls should be given first to customer service and then the overflow was to be given to the store if there was an overflow; that he was not familiar with a light which signaled to the switchboard operator that there were so many calls to the showroom that sales calls should, therefore, be sent to customer service representatives; that he was not positive where the sales calls were sent but he directed Hepworth "initially" to send them to customer service representatives; that he knew customer service representatives were taking telephone orders because he would see the orders; that showroom employees' priority was to wait on a customer; that "many many times" a walk-in customer would complain to him that they would have to wait while showroom employees would handle telephone calls; and that in telling the switchboard operator to first give the sales telephone calls to customer service representatives he might have told her by name which specific customer service representative to give the call to first and then named the other customer service representatives and he did this for the reason that the customers used to be very bitter about the fact that they weren't getting out of the place fast enough or they were not getting waited on fast enough. Dennis Seidelman, formerly the showroom manager, testified that the showroom used to have quite a few customers who would telephone their orders and then a few days later come to the showroom to pick it up; that showroom employees handled these customers and also stocked the showroom shelves, pulled and packed orders which were to be picked up later in the week, and took the overflow of telephone sales calls which customer service could not handle; that showroom employees "if there was an abundance . . . an overflow of calls, that could not be handled by customer service, to get the phone, take the number, if we were busy just take the number, tell the customer you will get back, and you will take his order. But just get the phone and that is it, get off of it so that it stops ringing, which used to incite some of the customers who were in for pick up"; that show-

room employees "would work, basically, their classification was a warehouseman, and they worked in the warehouse, but when I needed them in the showroom for customers for pickups and people came in, they came out to work in the showroom";¹⁹ that showroom employees hated to answer the phones; that "on occasion some customers [in the showroom] would get adamant, almost violent, and threaten, if you pick up another damn phone, I am going to walk out of here"; that Rosato asked to be transferred to warehouse; that Lazarus also wanted to go to the warehouse; that he kept a log of "all sales that were made through the showroom"; that he stopped keeping the log in 1984; that the log was used to keep track of how many customers "went through" a day; that he did not list the number of sales calls that came in "because that was being done by the switchboard so there was no sense in my keeping the record against hers"; that not every phone call was an order; that in early 1985 showroom employees spent only 15 percent of their time on the phone; that the phone did ring "off the wall" and "lots of times" he told the switchboard operator not to send any more calls to the showroom; that he does not know where the log is;²⁰ that he "imagined" that Mike Seidelman told Hepworth where to route the calls on a daily basis; that when the showroom was reduced sometime before Meidar purchased Respondent, he, Dennis Seidelman, had a light installed to let Hepworth know when not to send telephone calls to the showroom, and the light was used when showroom employees were busy waiting on walk-in customers; and that a number of walk-in customers complained bitterly to him about having to wait while showroom employees answered the telephones. Feder, who was in charge of the customer service office just before Meidar bought Noblit/AMA, testified that before Meidar purchased Respondent 85 percent of the incoming calls she took were sales calls; that when she asked Hepworth to send some of the sales calls to showroom so that she, Feder, could get a break from sales calls Hepworth advised her that Mike Seidelman instructed her, Hepworth, that sales calls go to the customer service department; that in 1983 Mike Seidelman sent out a mailer (R. Exh. 235) to customers which reads as follows:

¹⁹ On cross-examination, Dennis Seidelman conceded that in the last collective-bargaining agreement between the Union and Noblit, G.C. Exh. 52, there is a classification, as noted, *supra*, for store salesmen and a separate classification for warehousemen.

²⁰ Tollefsen subsequently testified that he made entries in the log when Dennis Seidelman was out of the showroom; that the log showed the number of orders taken in the showroom; that more specifically the log contained (a) the number of "walk ins" each day, (b) cash customers, (c) charge customers, and (d) the number of phone orders which were sent in and processed; and that the log was kept up until he was laid off in early April 1985.

*CUSTOMER SERVICE DEPARTMENT**WHEN PLACING AN ORDER BY PHONE*

FOR MORE ACCURATE, BETTER AND FASTER SERVICE, PLEASE ASK OUR SWITCHBOARD OPERATOR TO SPEAK TO OUR CUSTOMER SERVICE DEPARTMENT.

ILLUSTRATED ARE 8 EXPERIENCED SALES AND SERVICE PERSONNEL WHO WILL BE GLAD TO HANDLE ANY OF YOUR ORDERS, INQUIRIES, REQUESTS FOR QUOTATIONS OR PROBLEMS.

THESE PEOPLE ARE TRAINED TO HANDLE YOUR CALLS IN THE MOST EXPEDITIOUS MANNER.

IF YOU WISH TO PLACE AN ORDER, TRACE AN ORDER, OR REQUEST VARIOUS INFORMATION, OUR CUSTOMER SERVICE DEPARTMENT IS AT YOUR BECKON CALL.

WE HOPE THIS WILL ASSIST YOU IN DEALING WITH OUR COMPANY AND YOU MAY ASK FOR, BY NAME, ANY OF OUR SALES PERSONNEL AS ILLUSTRATED.

That the margin of the mailer contains drawings of eight people with a first name given for each drawing;²¹ and there was a light by the switchboard which indicated that they were too busy in the showroom to take any calls whatsoever. Customer service representative Breggar testified that before Meidar bought Respondent that he, Breggar, took telephone orders along with Bakely, Eckstein, Kunevich, and Dennis Seidelman, and "if we were all booked up, the gentlemen in the sales room or showroom" handled them; and that the customer service representative department had the primary responsibility for taking telephone orders. Customer service representative Kunevich testified that before Meidar bought Respondent 80 to 90 percent of her incoming telephone calls were to place orders; that generally she spent 30 to 50 percent of her working day talking on the telephone to special price customers; that she also took telephone orders from customers who did not have special pricing; and that the "eternal" light which resulted in the cessation of telephone calls into the showroom was on quite frequently. Customer service representative Bakely testified regarding the period before Meidar bought Respondent that most of the incoming calls to him were sales or sales related calls; that the showroom received incoming sales calls; that there was a light on the wall to signal to the switchboard operator that she should not give the showroom any telephone calls but the light was not used in the last 3 or 4 years; and that he never heard of the "eternal" light.

When Lazarus began at Noblit in December 1980, he received written instruction on Noblit's letterhead from Dennis Seidelman. (G.C. Exh. 48.) As here pertinent, the first of 11 numbered paragraphs reads as follows:

²¹ Specifically the names given are Harvey, Sandy, Herb, Bob, Tanya, Carl, Dennis, and Mike. Feder testified that Carl was Gershkovitz, who worked in the showroom; that Dennis was Dennis Seidelman and Mike was Mike Seidelman; and that Michael Michaels was Michael Seidelman alias.

COUNTERMEN & WAREHOUSEMEN

1. Answer telephones in the Showroom on the first or second ring. Do not ignore or make believe that you do not hear the telephone ringing. If you are busy with a customer in the Showroom, excuse yourself and tell the phone customer you will call him back shortly and get his name and phone number.

Subsequently Haldis wrote to the Union complaining about Lazarus' performance. As here pertinent, the June 21, 1983 letter (G.C. Exh. 49) reads in part, as follows:

After repeated verbal warnings to one of our employees, Hurley Lazarus, in the showroom by his supervisor, Mr. Dennis Seidelman, we now find it necessary to issue a written warning concerning his performance in the servicing of our customers.

An important part of Mr. Lazarus' duties is taking orders by telephone which requires the information being taken written by hand on an order form. In taking a customer's order, it is important that the information obtained be recorded accurately and legibly so the order can be properly processed. However, too frequently, the orders taken by Mr. Lazarus are illegible and inaccurate. When an order is not taken correctly, it typically results in additional cost relating to the return of the merchandise and the possible loss of a good customer.

Less than 9 months later Mike Seidelman wrote to the Union again complaining about Lazarus' performance. (G.C. Exh. 50.) As here pertinent the March 16, 1984 letter reads, in part, as follows:

We are writing with regard to one of our counter salesmen Bud Lazarus who is incapable of following instructions.

Among his duties as a counter salesman, he is also required to answer the telephone and take orders from customers via telephone. The problems involved in his answering the telephone and taking customer orders is that he consistently makes the same mistake over and over again. He has been given simple procedures to follow which are basically the same requirement in every case.

Included in Noblit's incoming telephone calls are customer inquiries regarding the status of order and billing problems. The former are described as "where's my order" (WMO) calls. A number of the witnesses called by the General Counsel testified about WMO. One, Anna Marie Albertson, identified General Counsel's Exhibit 101 which was given to her by Mike Seidelman in January 1978. As here pertinent it reads, in part, as follows:

"WHERE'S MY ORDER" PROCEDURE

1) Take Form From Bulletin Board (in time and date order) And Sign Log Sheet.

Pull Customer File And Look For Order In Question.

. . . .

3) Consult "Open Order Summary" In Customer Service Office. Summary Is Divided "L" (Lustre) And

"N" (Noblit) And Arranged By Customer Account Number.

....

6) If The Order Cannot Be Found In The Office, Give A Photocopy Of The W.M.O. Form To Rick For Warehouse Search. Keep The Customer File And The W.M.O. Form At Your Desk.

For a better understanding of what is involved it is necessary to treat the matter in terms of before and after Noblit utilized computers in handling these inquiries. Obviously the procedure began (dealing at this time only with oral communications) with a telephone call to Noblit. The switchboard operator sent all such calls to customer service representatives. The unit clericals' involvement, as noted in General Counsel's Exhibit 101 and as indicated by the witnesses' testimony, did not begin until a customer service representative posted a WMO form on the bulletin board. What occurred before that happened was described by a number of Respondent's witnesses. Former customer service representative Kunevich testified that the procedure for handling WMOs before December 1984, when customer service representatives started to use a computer in handling these inquiries, was as follows: First she ascertained when and how the order was placed. In most cases she would then tell the customer the order was "on its way." If this did not satisfy the customer, she referred to computer printouts kept in the customer service office, specifically an open order report and a shipping log. If she could not obtain the information from the printouts she would post a WMO form on the bulletin board for the unit clericals to research. Occasionally, Kunevich further researched the question herself, instead of using unit clericals, when she was dealing with an irate customer or on a key account. This also occurred when the customer was not satisfied with the information obtained by the unit clericals, which information was relayed by Kunevich to the customer. Former customer service representative Feder testified as follows regarding what she did when she received a WMO call:

I would ask them the name of the account, how his account is listed, and whether his order was phoned in to us, or mailed in to us, so I could make a determination as to whether it had actually been received in the building and was being worked on. Then I would proceed to ask him, or her, if they knew their customer account number. If they did, there was an open order summary that was printed on a daily basis, in customer order number. In customer account number order. If it was on the open order summary, it would give me the specific shipping order number that they were inquiring about. Going ahead, there was a printed list which was run daily, according to the shipping order numbers that were printed that day. That was also in numerical order.

....

[o]f shipping order number. In that book daily it was written in all the shipping orders that were sent out the day before. So, you could go to that number and if in fact the order was shipped, it would tell you the dates, the method of shipment, and how many parcels were included in the shipment.

Q. Now, you mentioned two documents, the open order summary and this book listing the shipments. Where were these documents physically located?

A. In the customer service office.

Q. Were you working in the customer service office?

A. Yes.

Q. What would you do if a customer did not know his or her account number?

A. We had a printout of all the Lustre accounts and Noblit accounts, which gave us sales for the past three years. We had that in the office and that was in alphabetical order, or customer order number. They are one and the same. You could find the customer number from that and follow the same procedure as I told you before.

Q. When you said that that listing of customers in alphabetical order was in the office, could you be more precise as to where it was?

A. It was in the customer service office. There was a table that contained all these papers.

Q. Now, if you were able to obtain the customer account number, and from that the shipping number, order number, and from that the method, date and manner of shipment, what would be the next step that you would follow?

A. I would advise the customer.

Q. If you could get the information in the manner that you have described, would you ever post a where is my order form on the bulletin board?

A. No.

Q. Now, what would you do if some of the information you were looking for was not available? For example, if the book listing the shipments didn't give the method, date and manner of shipment, what would you do at that point?

A. If in fact the shipping order appeared on the open order summary, and I knew there was an order in the house, I would ask the customer how many items were on there. If there was one item, and the order had been in the house for five days, I would look on my inventory to see if there was a stock problem, rather than any other type of problem that would have held up his order being shipped.

Q. You mentioned that you would look at your inventory. Where was the inventory?

A. We all had inventories on our desk to work with.

Q. Okay. Proceed then with whatever other steps you would follow?

A. If it were several items, and the item was in stock, I would tell the customer that I would get back to him and go to the file. In the file there would usually be a copy of the shipping order that they were referring to. It would indicate to me, from the file, whether it was on credit hold, if there was any kind of credit problem, or if the order was a UPS shipment, based on the size of the order, or a truck shipment. So, I know what my next step would be as far as looking for it in the warehouse.

Q. Now, you said that you would go to the file. Where were the files located that you would go to in reference to where you were working?

A. They were on the opposite wall from my office. I would say about 15 to 20 feet from my office. That was the Lustre line. There was also a Noblit file. They were contained within the same office but down towards where the secretary sat.

Q. Just so the record is clear, you referred to Lustre line files. Can you tell me the difference between Lustre line and Noblit?

A. Well, Lustre line is our hardware division and they were segregated into two separate customer listings and two separate filing systems.

Q. Okay. So, it was a division of Noblit?

A. Yes.

Q. Now, when you went to the customer files, either the Noblit files or the Lustre line files, were you in view of the Union clericals?

A. Yes.

Q. At any time, did any of the Union clericals, or Union representatives, question you about why you were going to the customer files?

A. No.

Q. At any time did any of the Union clericals, or Union representatives, protest the fact that you went to the customer files?

A. No.

Q. Now, are you aware of what is known as the where is my order form that would be posted on the bulletin board?

A. Yes.

Q. Before you started using the computer terminal, did you ever have occasion to post such forms yourself?

A. On occasion.

Q. Before you started using the computer, how much of the time would you do the leg work yourself to research the status of an order, as opposed to posting a where is my order form on the bulletin board?

A. Maximum bulk of the time I did it myself.

Q. And would you ever post a where is my order form if you could get the date and manner of shipment from the documents that were in the customer service office?

A. No.

Q. Why would you track down orders yourself, rather than post a where is my order form on the bulletin board?

A. Usually when the customer called, they were irate. They wanted an immediate answer and they didn't want you to call them back. They wanted to hold. If they spent the money to make the call, they wanted the answer right then and there.

With respect to handling WMO calls before the computer was utilized, customer service representative Breggar testified that if the order was 2 to 4 days old he would tell the customer to wait; that if the order was older he would get the necessary information from the customer and then check the status of the order utilizing the computer printouts available in the customer service office; that he called the shipping department and got information as to when the order was shipped; that when he had an irate customer, which happened

rather frequently, he himself would go into files to look for the information necessary to answer the inquiry; that sometimes he asked the other customer service representatives; that on occasion he posted a WMO form on the bulletin board; and that 50 percent of the time a check by the union clericals indicated only that the order was in the warehouse so he would tell customers to be patient for a few more days.

Customer service representative Bakely testified regarding the period before a computer was utilized to handle WMO calls, that normally he would post a WMO form on the bulletin board but if the customer needed an immediate answer or if it was a salesman of Respondent calling in to check on an order he, Bakely, would try to obtain the information himself utilizing files first and then the computer printouts which were located in the customer service office. When the WMO form indicated only that the shipment was in the warehouse, the customer service representative had to follow up and have someone search for it in the warehouse. Bakely testified that usually the search by union clericals, resulted in it being indicated on the WMO form that "it was either shipped, it was in the warehouse or can't find."

Union Steward Shields testified that before March 1985 she never noticed customer service representatives performing WMO work. Maria Tumolo, a unit clerical, testified that she never saw a customer service representative take a WMO form from the bulletin board and search for the information nor did she ever see a customer service representative going through files trying to find information for a WMO call. Tumolo also testified that when WMOs were "not getting done quickly enough, they [customer service representatives] would take them off the board and give them to the shop steward who would then distribute them out six or seven a piece [to the unit clericals]." Nonetheless, subsequently Tumolo testified that when Feder did this it was not a question of unit clericals not being able to keep up with the WMO work and if Feder thought that to be the case, she was mistaken. Feder testified subsequently that customer service representatives had problems with union clericals not handling WMO requests in a timely fashion. The following testimony was elicited from Feder regarding a specific instance:

A. It was in the afternoon that the where is my orders were given out. Anne Marie Albertson had gotten mine. She told me she couldn't give me an answer until the next day because the warehouse was finished for the day and she had to get her answer from the warehouse. I asked her about it the next day and she would get back to me. It was like the third day that I went to the shop steward. I went to Marion Shields and she went to Anne Marie Albertson who started screaming at me for even mentioning it to Marion.

Feder also testified that some union clericals told her that they did not like doing WMOs; and that union clericals Terry Boyle, Heather Hurvitz, and Albertson kept the WMOs unworked in their bin the longest.²² Several union clericals²³ testified with respect to how much time they spent on WMOs "before March 1985" and how much the work

²² Earlier Kunevich testified that unit clericals Hurvitz, Boyle, and Albertson complained to her about being requested to handle WMOs.

²³ Shields, Albertson, Angela Powers Dominguez, and Tumolo.

dropped off in late February or late March. Documentary evidence introduced herein (G.C. Exh. 5) demonstrates that the WMO work done by union clericals decreased even before this, however. While union clericals Dominguez, Shields, and Tumolo testified generally that the customer service representatives did not begin to use a computer to handle WMOs until about March 1985, testimony elicited from customer service representatives, documentary evidence (R. Exh. 1) combined with testimony with respect thereto and the testimony of the person who trained them in the use of the WMO computer program, Swen Senuik, demonstrates that customer service representatives began using a computer in December 1984 to handle the WMOs. Using this method many WMO inquiries could be handled in a minute or less.

When unit clericals took a posted WMO form from the bulletin board usually they made an entry on a "'Where's My Order' Log Sheet." Sometimes such an entry was omitted. The log sheets for the period between January 25 and March 21, 1985, were introduced herein. (G.C. Exh. 5.) In my opinion this exhibit accurately shows the situation regarding WMOs (taking into consideration that some unit clericals did not always make entries when they researched WMOs) during the period of time covered. Excluding the first entry, dated January 25, 1985 (because it was late in the business day and there may have been other entries for that day) there are a total of 24 WMOs listed for the first 10 business days of the covered period. Similarly excluding the last entry, dated March 31, 1985, there are a total of 22 entries for the last 10 business days of the covered period.²⁴ The dwindling of the number of WMOs described by Tumolo namely from about 30 a day to 1 or 2 a day did not occur in late February or March 1985. Rather it occurred months before Meidar purchased Respondent. And as testified to by customer service representative Breggar, before Meidar purchased Noblit it generally took 10 days to 2 weeks before an order was shipped. Meidar changed this so that orders were generally shipped in 2 to 3 days. Consequently, WMO inquiries further dropped drastically.

Switchboard operator Hepworth testified that she sent all calls relating to billing and accounts to Albertson and Elaine Childs (and later to Tumolo) in accounts receivable. Albertson testified that before March 1985 she and the other unit clerical in accounts receivable handled a total of 40 to 45 telephone inquiries a day. The inquiries dealt with such matters as payments, returned merchandise, and shortages. Customer service representative Bakely testified that if a telephone call involved a question of shortage he would transfer the call to Bill Zimmerman, Albertson, or Tumolo (or her predecessor Childs). Zimmerman testified that he would get information from customer service representatives on customer claim report forms or in the form of notes on paper;

that he in turn distributed these written inquiries dealing with shortage to union clericals; and that he himself handled the notes which involved proof of delivery, freight problems, charges, wrong pieces, and discounts. Zimmerman believed that each of the three unit clericals under his supervision (Albertson, Tumolo, and Hurvitz) received an average of five telephone calls a day. He conceded, however, that he was not always in a position to know how many calls they received since before, during, and after March 1985 he was not always at his desk; and that he had no idea how many calls were transferred to the three unit clericals he supervised from the other department in Noblit. On rebuttal Albertson testified that several calls a day were transferred to her from other departments, i.e., showroom or customer service representative; that she received notes directly from customer service representatives regarding complaints involving shortages, price adjustments, and problems with accounts; that after March 1985 the number of notes in her bin dropped dramatically and she rarely had any of them; that if someone else had made an adjustment such as issuing a credit memo it would be difficult for her to know that because anyone could make adjustments on the computer screen and credit memos did not go through her; and that an investigation by her of the subject of the notes she received from customer service representatives could result in a credit, a United Parcel Service pickup, a salesman visiting the customer, checking to see if a payment was made, check to make sure a return was received, and handling a misshipment. Feder testified that if the customer service office received inquiries regarding billing problems, she would transfer the call to the credit department or give the call back to switchboard operator Hepworth; that neither she nor other customer service representatives issued credit memos; and that if a shipment which was the subject of a WMO was being held up for non-payment of a prior order, she would turn the matter over to the credit department.

From November 1984 to the day he purchased Respondent, Meidar was introduced at Noblit/AMA as a consultant.

In the fiscal year ending February 1, 1985, Noblit/AMA showed a profit.

Unit clerical Dominguez was also the permanent relief switchboard operator. She testified that in February or March 1985 she overheard a conversation between Meidar and Michael Seidelman while she was at the switchboard, which is located 2 feet from Michael Seidelman's office; that both men were in Michael Seidelman's office; that Michael Seidelman said: "No. I don't think you are a parasite [sic]"; that Meidar then said: "This place will be running better in six months without the F-ing Teamsters union"; that Meidar then said: "No, I am not taking money for nothing"; and that she told Union Vice President Gerald Sheahan about this conversation right after she heard it. Michael Seidelman and Meidar both deny this conversation.

Citing article 29 subparagraph 4 of the collective-bargaining agreement between Noblit and the Union (G.C. Exh. 52), Michael Seidelman testified that he introduced Meidar to Union Secretary-Treasurer John Morris before Meidar purchased Respondent because Seidelman believed that this language²⁵ in the agreement required him to have the approval

²⁴ A majority of the entries on G.C. Exh. 5 cover WMOs researched for Eckstein who was hired as Hurvitz' assistant and who handled, as here pertinent, WMOs. Senuik did not specifically include Eckstein among those who he trained on the WMO computer program. And Bakely testified that Eckstein did not know how to use the computer and he, Bakely did not recall seeing Eckstein use a computer to handle WMOs. On the other hand, Breggar testified that Eckstein occasionally used a computer to handle WMO calls, and Kunevich testified that Eckstein, along with the customer service representatives, had access to a computer terminal. Elkstein was terminated in mid-March 1985 for poor performance.

²⁵ The language reads as follows: "In the event that the Company finds that it is necessary to sell or assign any portion of its machin-

of the Union for the sale of Respondent to Meidar. Sheahan testified that when Morris shook hands with Meidar at this introduction, which occurred around March 1, Meidar said while smiling: "Its always wise to know your enemy."²⁶ Meidar denied making this statement. Neither Sheahan nor Morris ever expressed any objection to Michael Seidelman regarding the sale of Respondent to Meidar. And Sheahan testified that under the above-described contract language it appeared that the Union had the right to block any sale of Respondent with which the Union did not agree.

On March 15 Haldis forwarded the following letter (G.C. Exh. 69) to Noblit employee Mary Sutton:

Due to a dramatic slowdown in our manufacturing operation, we have found it necessary to lay off some of our employees. We initially started with a group of 9 people effective March 8, 1985, based on seniority. However, we then realized a further lay off was necessary affecting another 7 people, effective March 15, 1985. Based on seniority, you are one of the 7 people in the second group to be laid off. However, since you are currently not working due to an injury, your lay off notice will not be effective until you are able, based on your physician's authorization, to return to work.

Therefore, I suggest that when you do receive an approval to return to work, you contact us immediately informing us of such and also to determine if the lay off is still in effect and when you may return to work.

However, when we are able to recall you from this lay off, we will certainly notify you either by phone or mail. We truly hope that when we are in a position to recall you from this lay off that you will be in a position to return to work.

As noted above, Meidar purchased Respondent on March 25. As here pertinent, he changed certain of Noblit's operations.²⁷ The reduction of the turnaround time between the receipt of an order and the shipment of the order, and the resulting further reduction of WMO calls is treated above. Other changes include but are not limited to (1) no longer utilizing Dominguez as a permanent relief switchboard operator, (2) customers who wanted to pick up their orders at Noblit's showroom now had to call in their order 1 day in advance so showroom employees could pick and pack the order and have it ready for the customer when he came to the showroom, (3) Susan Griffiths left the bargaining unit for

a management position,²⁸ (4) five 800-telephone numbers were installed so customers could call Noblit toll free, and three of those 800 telephone numbers bypassed the switchboard, (5) the discontinuance of Noblit using its own one delivery truck, the transferring of the truckdriver, Burt Moore, to the warehouse, and the commencement of the use of motor carriers to handle Noblit's Delaware Valley traffic, (6) Andrew Gormley, who before the purchase was in charge of credit, became, according to Zimmerman, the equivalent of an office manager, Zimmerman continued as accounts receivable supervisor and also became order supervisor, and Victor Fontanes became billing supervisor,²⁹ (7) Marian Twetsky who held an "interoffice" management position was asked to leave and her position was abolished, and (8) Ted Vechowski, a warehouse manager, was terminated and his position was never filled.

On March 27, the following letter (U. Exh. 5) was forwarded by Haldis to Morris:

Due to a slow down in our Noblit Brothers and Lustre Line business, we find it necessary to have a lay off in our warehouse affecting three (3) of our employees. Attached is a seniority listing of our warehouse and showroom employees. The employees affected are:

8Ken Tollevsen
Dennis Stasen
Terry Smith

These employees will be notified Friday, March 29, 1985 that their last day of work will be Friday, April 5, 1985.

It should also be noted that Dennis Stasen is currently out of work due to an injury and in light of such, when he is given permission to come back to work, he will be on lay off at that time.

We hope that this lay off is very short lived.

And on March 27, the following letter (also U. Exh. 5) was forwarded by Haldis to Tollevsen and Smith:³⁰

Due to a slow down in our business activity, we find it necessary to have a lay off in our warehouse and showroom. Therefore, you are affected based on seniority.

Your last day of work will be Friday, April 5, 1985. Your payroll check for Thursday and Friday, April 4 and 5, 1985, will be mailed to you on Friday, April 12, 1985.

ery or business, it will be done by mutual agreement of the Employer and the Union."

²⁶ Sheahan testified that he did not mention this when he first testified herein about this meeting because he did not remember Meidar's remark until later.

²⁷ Tollevsen testified that just after Meidar purchased Respondent he had a mass meeting with all the employees, including Tollevsen. In introducing Meidar to the employees at this meeting, Michael Seidelman, according to Tollevsen's testimony, said that Meidar "was going to keep everything the same and not make any changes." Also, according to Tollevsen's testimony Meidar then told the employees that he could increase the Company's sales from \$20 million to \$100 million. Michael Seidelman subsequently testified that he did not tell Respondent's employees that Meidar was going to keep everything the same and not make any changes.

²⁸ Unit member Childs took Griffiths' old position and in turn, as noted above, Tumolo took Childs' old position.

²⁹ Zimmerman testified that part of his function in terms of supervising employees in the credit department was to attempt to streamline the operations pursuant to the instructions of Meidar as relayed by Gormley.

³⁰ For the stated reason, the following letter forwarded by Haldis to Stasen on March 27, G.C. Exh. 5 and also part of U. Exh. 5, differed slightly:

Due to a slow down in our business activity, we find it necessary to have a lay off in our warehouse and showroom. Therefore, you are affected based on seniority.

However, since you are not working due to an injury, you will be on lay off as soon as you receive permission to return to work.

If there is a change in our situation, you will be notified at that time.

As soon as we are in a position to recall you, we will contact you at that time.

As noted supra, Tollefsen worked in the showroom. Smith worked in the warehouse. The last week before his layoff Tollefsen, as indicated, supra, worked in the warehouse picking orders for general shipment. Showroom employee Lazarus also was sent to the warehouse the same day as Tollefsen. Haldis testified that he believed that one of the reasons that Lazarus was shifted to the warehouse was the reduction in the size of the showroom. Showroom employee Gershkovitz testified that when there were four showroom employees they were not sent into the warehouse on a regular basis but rather they worked in the warehouse "as needed" or when it was slow in the showroom, and when they did work in the warehouse only up to two of the showroom employees would work in the warehouse at one time; and that when Tollefsen was laid off and Lazarus was sent to the warehouse he, Gershkovitz, and Rosato were told that they would no longer be picking the orders but rather the warehouse would do this.

With respect to matters which did not change with the Meidar purchase, (1) customer service representative Kunevich testified that there was no change in "heading up" (i.e., placing customers' numbers on order forms etc.) forms; (2) former customer service representative Bakely testified that there was no change in the procedure under which he handled calls from customers regarding shortages, overcharges or other billing problems, viz, he transferred them to the credit department or he took the information down if it involved shortages; (3) Zimmerman testified that both before and after Meidar's purchase he, Zimmerman, handled customer inquiries about billing problems such as proof of delivery, freight problems, and discounts and that there was no change in the frequency with which he himself handled such matters; and (4) former customer service representative Feder testified that the three new employees who were given the above-described three 800-telephone lines which bypassed the switchboard operators³¹ were also told to transfer customer inquiries about billing problems to the right department.

Feder also testified that toward the end of March 1985 Meidar spoke to the customer service representatives indicating that he intended to establish a telemarketing department to increase sales. Bakely testified that there was a gradual transition from customer service representative to telemarketing; that he was a customer service representative and then he started making outgoing calls in addition to taking incoming calls;³² and that Feder became the head of telemarketing in late spring or early summer 1985 when the telemarketers were moved into an area with separate cubicles, screens, and telephones.

Showroom employee Gershkovitz testified that the new telemarketers asked him "[h]ow to write up an order [and] check the inventory."

On April 4 Michael Seidelman met with Morris and Sheahan at Local 115's offices. Michael Seidelman had asked for the meeting which started about 4 p.m. and lasted

for about 35 minutes. At the outset Seidelman explained that he was merely an employee of the Company and that its new owner, Meidar, was running the Company. A number of topics were discussed at this meeting. With respect thereto, Michael Seidelman testified that at this meeting he sought and obtained approval from the Union to (1) reduce the size of the showroom, (2) discontinue the use of the one delivery truck it operated and transfer the driver, Moore, to the warehouse at no loss of pay, and (3) replace warehouse employee Dave Ross with Terry Smith. On cross-examination, Michael Seidelman conceded that he never advised Morris or anyone else from the Union that with the reduction of the showroom sales calls were going to be sent to customer service representatives and telemarketers. Michael Seidelman believed that Sheahan may have been present at the April 4 meeting which he, Seidelman, had with Morris. Regarding this meeting, Sheahan testified that he was present; that a number of topics were discussed, including Moore and his truck, the fact that everyone would have a computer and Meidar wanted to cross-train some of the union clericals³³ so they would know more than one job, and the fact that AMA was in bad shape; and that Michael Seidelman said that Meidar wanted to establish a telemarketing program at Noblit to increase sales and the showroom was going to be reduced in size since Noblit's customers viewed the showroom as competition, which reduction would result in increased office space.

On April 9 Michael Seidelman forwarded the following letter (R. Noblit's Exh. 170) to Morris:

Thank you for the time and courtesies extended to me during my visit with you last Thursday, April 4, 1985. In view of my detailed discussions with you, I should like to confirm the changes that we are implementing which are necessary for the future growth and success of the company.

In order for us to reverse the current downward trend and to take measures to bring about an expedient and healthy recovery, as well as a rapid expansion of the company, I would like to reiterate some of the ideas that we are implementing.

First, we are cross-training all of the order-writing, billing and credit department personnel and making each one of them a CRT computer operator, knowledgeable in all facets of our office operation. This will enable us to give better service to our customers through our warehouse operation.

Second, in the past, a problem we have had to deal with was, the inadequate office conditions that currently exist. The cramped conditions created hardships, especially in the summertime with inadequate air-flow. As I advised you, we are in the process of replacing our retail showroom with a brand-new expanded office facility not only for comfort but for the increased capacity of our offices and productivity that a new office facility will afford us. We are consolidating our retail showroom, which has been a source of contention with our wholesale dealers and has generated theft and loss to the company because of the way this retail showroom was set up in the past.

³¹ Theresa Baines, Karen Stojak, and Steve Martin.

³² Bakely described the change as follows: "rather than be passive and just sit there waiting for customers to call in, we became aggressive calling customers trying to establish business."

³³ The union representatives told Seidelman that they encouraged cross-training employees because the involved employees would be more valuable to a company.

Last year we established our loss to the company to be \$300,000, and we don't know how much the showroom contributed to the problem because of no control in this area. We are making a brand new pick up type of showroom counter on a wholesale level which will put us in a better light with our customers.

As you know, John, in order to service our customers in the local area, we used our truck which; A) became uneconomical and B) instead of service being 24 hours delivery, it became 7 to 10 days delivery, since once a truck is being sent to Camden it cannot repeat itself before it completes the "milkman" route, that is, the next time in Camden would be approximately 7 to 10 days later.

This created an extremely poor delivery schedule which in turn caused a tremendous loss of business simply because we could not service the local market the way the market is expected to be served.

We are well aware that Bert has 30 years seniority and we have no intention of doing away with his service. In fact, we are purchasing a brand new fork lift truck (that will cost us approximately \$40,000) to be used in the warehousing operation for reslotting and upgrading our warehousing system which requires at least two full-time for lift truck operators.

I also shared with you the fact that we have to reslot (relocate) our entire warehouse system which could take us many months to accomplish and thereafter it will become a routine maintenance job which Bert would be required to fulfill.

As our current truck has close to 100,000 miles on it and considered worthless, we intend disposing of this vehicle as soon as possible.

Last of all, as I advised you at our meeting, based on a complete survey by our accountants, the accountants of the new owner of the company and my personal findings, our factory last year was a complete and total loss.

To be specific our kickplate department not only constituted a net loss of over 1/4 million dollars, but the market for this particular style and type of product has slowly been drying up because of a design change in the industry.

Also, many of our customers have switched over from using aluminum or steel to vinyl which is a product which we cannot produce.

As I shared with you, our two major accounts that account for approximately 70% of our business was lost this year. I refer to Chamberlain (Sears) and Evans. As I mentioned to you Victor Posner's bankruptcy situation left its mark on our company.

John, unfortunately for all concerned, the manufacturing end of our business last year constituted a tremendous loss and we can see no improvement in the future. It would be well intended to convert whatever salvageable monies we can from that entity into expanding the hardware distribution part of our operation.

The only real expansion and positive growth for our company would be in this area and as I told you on Thursday, we recently hired the National Sales Manager from Ideal Security Hardware, Jack Jaffe, to expand our market in the hardware distribution field. We have also

hired Anita Prehm as Marketing Manager to assist us in our marketing efforts.

We intend to do this with the implementation of a brand new extended telemarketing sales force. If we are successful, we will be able to restore and increase our warehouse operation significantly in the next 6 to 12 months.

I am sure you can understand that unless a company changes with the times, a company won't be able to survive. If we would continue to stay with our operation as it was, I could see nothing but disaster in the future, based on the above.

I believe with your cooperation and the expertise of the new management that has taken over the company and with our new marketing strategy, we will be able to have a much brighter future for all concerned.

Thanks again for your consideration and cooperation in this matter.

With respect to April 4 meeting and the followup letter, Sheahan testified that Michael Seidelman never told the Union (1) what kind of impact cross-training might have, (2) that the reduction of the showroom would result in the "permanent" layoff of one employee and a permanent transfer of another showroom employee into the warehouse, and (3) that telemarketers would be (a) handling WMOs to the exclusion of union clericals, and (b) responding to questions concerning billing and credit, thereby eliminating certain of the work of union clericals. The Union did not respond to the April 9 letter. At the April 4 meeting representatives of the Union, according to Sheahan's testimony, responded that they would have to take a hard look at the proposals to reduce the size of the showroom, and increase the use of computers since they were not told at that time about the adverse effect these proposals would have on unit members.

The following two documents (U. Exhs. 28 and 29, respectively) were received:

ORDER PROCESSING PROCEDURE

The order processing procedure is now being controlled by Arnold Hurvitz and therefore, he will give out the work accordingly.

If you have any problems with the below schedule or suggestions, you should see Arnold Hurvitz.

Also note that the batch corrections must be completed before 12:00 Noon; if they are not, your lunch is to be postponed. It is imperative that we get the morning batch in by 12:00 Noon for printing.

The procedure is as follows:

A.M. SCHEDULE

All girls process in AM

Cut off 11:30 AM

Corrections made between 11:30 AM and 12:00 Noon

Orders printed by 1:30 PM

Orders split and matched by 1:45 PM

Orders checked by 3:15 PM

Orders credit checked 3:15 PM–3:30 PM

Orders in Pete's hands by 3:30 PM

P.M. SCHEDULE

Arnold will be posting the afternoon schedule, based on the volume of work accumulated and remaining.

Remaining orders processed in afternoon from 1:00 PM–4:00 PM (# of girls vary)

Cut Off is 4:00 PM

Corrections made between 4:00 PM and 4:30 PM

Orders printed by 6:00 PM

Orders split and matched following morning by 8:45 AM

Orders checked by 10:30 AM

Orders credit checked 10:30 AM–10:45 AM

Orders in Pete's hand by 10:45 AM

TH:ww

4/9/85

APRIL 10, 1985

TO: ALL ORDER WRITERS
FROM: MANAGEMENT

Please be advised that effective immediately, all management checking and/or proof reading Lustre Line or Noblit orders have been instructed to keep a log on all errors [sic] they encounter.

We are aware that many of you are new at this function and realize that this situation will improve. However, there are many order writers who have been in this capacity for quite some time and are still making errors.

Therefore, it is imperative that you are particularly careful in the heading up of orders as well as the zip or item numbers, carton quantities, etc. which delay the processing of these orders to the warehouse.

In addition, you must be sure your initials appear on any and all orders you are responsible for.

Please note that this is being done in an effort to alleviate problems and make it possible for the company to expedite orders with a minimum delay.

On April 10 Union Business Agent James Oliver went to Noblit and met with Meidar. They discussed cross-training and whether the bargaining agreement between Noblit and the Union prohibited it. During this meeting Oliver, after caucusing with stewards, indicated that he did not oppose cross-training. Meidar testified that cross-training did not involve the transfer of any work from bargaining unit employees to nonbargaining unit employees.

Morris' assistant, James Smith, testified that on April 29 he and Morris "were returning from another meeting in Center City [Philadelphia] and we were going . . . [by] Noblits and we decided to stop in and see the employees"; that they spoke to office personnel and then went out to the shop, AMA, and spoke to the employees and members of the Union; that they then asked Michael Seidelman if they could talk to him; that Michael Seidelman agreed and he called

Meidar and Haldis in;³⁴ that stewards Carol Anderson, Juanita Lupton, Marion Shields, and Tom Fisher also attended the meeting; that he, Smith, and Morris told Noblit's representatives about the complaints they heard that day from employees, namely, that union clericals' work ("telephone work, credit work and what they call 'where's my order'") was being taken away from them and given to managerial and nonunion employees; that he and Morris asked Noblit's representatives why they were taking this work away and when the union clericals were going to get it back; that Meidar said that he was studying the entire system so he could determine for himself where improvements could be made in office procedures and it was not his intent to take work away from employees in the bargaining unit and the "contract would be lived up to and . . . [union clericals] would get the work back"; that another complaint voiced at this meeting was that supervisors at times stood behind computer operators and recorded input, mistakes, and timing and they refused employees' request to have a steward present; that Noblit's response was that management was just trying to see how the system worked and how it could be improved; that the AMA layoffs were discussed; that a recent layoff where allegedly someone was laid off out of seniority was discussed; that steward Fisher complained managers were riding warehouse employees regarding the number of orders they should get out each day; that Noblit's representatives responded that they just wanted to get a handle on what was moving in and out of the warehouse daily; and that the Ross/Smith layoff/recall, respectively, was also discussed.³⁵

Meidar, with respect to the April 29 meeting, testified that Morris said something to the effect that "You [Meidar] think that you can . . . [give] flowers [to the clericals for Secretary's day] and therefore change jobs and . . . move things around"; that none of the cross-training or combining jobs result in any billing or other bargaining unit work being done by either telemarketers or customer service representatives; and that AMA and severance with respect thereto were discussed.³⁶ On cross-examination, Meidar testified that while Morris complained at the April 29 meeting, he did not complain "with regard to the transfer of work or anything like that." On the next page of the transcript, on redirect, Meidar testified that Morris "told me that you cannot send flowers and therefore . . . take work away."

Regarding the April 29 meeting, Haldis testified that he thought Shields brought up the question about union clericals losing the WMOs; and that at some point in the meeting Meidar made a general reference to the fact that changes were needed for the Company to do more business. Michael Seidelman testified that while he recalled that Shields attended this meeting he did not recall her discussing WMOs at this meeting.

Shields testified as follows about what she said at the April 29 meeting:

³⁴ During the meeting Warehouse Manager Bill Obergfell came into Michael Seidelman's office.

³⁵ Ross was laid off by agreement of the Union and Noblit. James Smith testified that Ross said he wanted to be laid off.

³⁶ Meidar testified that Morris asked for severance regarding AMA employees and he, Meidar, agreed to it. For this reason, Meidar asserts, he did not include this topic in his May 1 letter to Morris, treated *infra*.

The complaint was. I brought it [WMOs] up again that we noticed that our work was being taken away and we were dissatisfied, we wanted something done. And, Mr. Morris said, you know, we did not want our work taken away from us, and that it should be returned. And Mr. Meidar explained that he had a lot of changes he wanted made and if we wanted the business to succeed, he said that we had to try and cooperate and work with him to make a go of it.

And Mr. Morris was complying with this, but he stressed that he wanted the work given back to the girls.

Sometime earlier in April, Shields met with Haldis regarding the reduction in the number of WMOs union clericals were handling. She testified that she called Oliver and he and she met with Haldis; that Oliver told Haldis that this unit work was being taken away and he wanted it returned to the unit; that Haldis, who was unaware of this said if it was happening, the work would be returned to the unit; that Haldis called Feder into the meeting and in Shields' presence Feder said "there were changes being made and this was what she was told to do"; and that Haldis then said "return the orders to the girls." Regarding this meeting, Oliver testified that when Haldis called Feder into his office she said "we are making some changes and as soon as we are finished making the changes, we will give the work back to them" and then Haldis said "make sure that is done."

Regarding meetings he had with representatives of the Union on the reduction of WMOs, Haldis testified that the union representatives were concerned about the WMO situation and the loss of work and they wanted it stopped; that

[t]here were a number of meetings concerning this subject. And in these meetings I told them—not necessarily in the first meeting, but . . . [subsequent] meetings, I told them that the company's position was that the work that had been done in the past or whatever was now minimized; it was only going to be 20 minutes a day and that in light of it being owned by a new owner, that the company is changing and that for the company to turn [sic] efficiently and effectively, that this type of work couldn't continue.

He did not tell union representatives that the WMO work would be returned to them; that initially when he discussed the matter with Shields alone, after determining what was involved, he advised her that "the people in customer service handle it properly since the computer information was available to them"; that Feder was not present when he, Haldis, met with Shields and Oliver; that

In one of the meetings, possibly, the first or something, Marian had mentioned that someone had some work that morning and made a complaint about a specific thing that I looked into, and I asked Sandy about it. They explained the situation that it involved another girl and I addressed that problem.

I believe it involved Tanya Kunevich who had taken a call from a customer. And her office was right next to Brenda Hepworth, the switchboard operator, and she had given some information or took time to get infor-

mation for this customer, and Brenda apparently overheard this, told Marian about it and Marian specifically mentioned this problem to me. At that point in time—this was probably even before these meetings, the ones we've discussed. This is probably earlier than that. And I told her I would look into that situation and that I would correct it if there were a problem. That's how I left that meeting, over that complaint.

And when I looked into it I found out that the customer was very angry and upset the way he was handled, and Tanya felt that it needed to be handled that way; that it was sort of an exception. But the customer again was very upset in the way he was handled and wanted to be serviced in a better way. So she took it upon herself to do—or give the information the customer was looking for. It typically related to this where's my order procedure, where she went and grabbed the file or some information that the girls apparently wanted posted on the board.

Tanya had gone and searched out a where is my order—

Quickly, while the customer waited on the phone and gave a quick answer because the customer was pretty upset and anxious to get the information. I only asked—Sandy only become involved when I asked her about what happened. She said it had something to do with Tanya and she basically described the situation to me, but I then went to Tanya for a more detailed explanation.

I told her [Tanya] that in light of the circumstances, you know, she shouldn't be doing this because it's making waves, and not to do it again.

I don't remember the time frame, but I believe it was earlier than these meetings.

Kunevich testified that she did not remember Haldis speaking to her about her personally tracing down a WMO and telling her not to do it again.

Feder testified that Haldis never talked to her about an issue regarding WMO work; that Haldis never told her to return WMO work to the union employees; that she was never present at a meeting between Oliver, Shields, and Haldis where the subject of WMO work came up; that she never told Haldis, Shields, or Oliver that there were changes being made regarding "where is my order" work and the customer service representatives and telemarketers were doing what they had been told to do; and that she never told anyone that the Company was making changes and as soon as the Company had finished making these changes the WMO work would be given back to the union employees.

During the spring of 1985 Feder attended a 2-day course on telemarketing. Subsequently, she was put in charge of telemarketers. And both customer service representatives and the people who were doing telemarketing work began to move into cubicles in April 1985. Additionally, people were

hired to do telemarketing work.³⁷ Feder testified that when they were first hired they did customer service representative work and eventually they were promoted into telemarketing.

Albertson testified that beginning in the spring of 1985 the number of customer complaint calls she received declined.

Meidar forwarded the following letter, dated May 1 (R. Exh. 212), to Morris:

Dear John:

While I thought we had a constructive meeting yesterday and the outcome was satisfactory, I would like to review the following with you. Starting with Monday morning, April 29, you called and said you would like to make arrangements to come to our office to discuss some specific situations with the management of Noblit Brothers, Inc. You called Mike Seidelman and indicated you would *call* and advise a *specific* time you would be here.

To my total surprise you arrived at our offices unannounced with other representatives in attendance. I am sure you would not be pleased nor receptive if we were to barge into your office unannounced. You have stated that Noblit Brothers' management has to make an advance appointment with you and union representatives. I feel very strongly we should have the same courtesies extended to us.

In the future, I would appreciate if you or any of your representatives wish to have a meeting at our company that you call for an appointment. We will continue to extend those same courtesies to you. I would expect you to respect our position as we respect yours.

In our meeting you brought up several points at issue with your representatives. I did not feel it was appropriate at the time to respond to all the complaints discussed. However, I want to take this opportunity to share my feelings with you.

A. To the best of my knowledge after speaking with the office people yesterday, they are very happy and they are productive. There are two (and sometimes more) sides to every story, and I do not understand why you have the impression that some of the office personnel are unhappy. The perception of your representative is biased.

B. With regard to the warehouse, I have talked with each person and except for the two people previously, and one person currently, everybody is working and very happy.

C. It was my understanding that Terry Smith would come back to work on Wednesday, May 1st and *not* on Tuesday, April 30th. Terry appeared on our premises on Tuesday and this was definitely not

in accordance with our agreement. We were all extremely surprised and very disappointed by this action on your part.

I feel we had an understanding. This also happened with two other employees. We agreed to bring them back on Wednesday, May 1st. You sent them in unannounced on Tuesday, April 30. John, if you tried to confuse the management, you certainly were successful.

D. I must also bring to issue that your going into the shop was not an honorable thing to do. You were ordering the workers what to do and what not to do. I previously told you we would work with you in an open and above-board manner. I believe you should do likewise. I am very disappointed and think you took advantage of my desire to work with you.

E. John, we made no previous complaint to you, however, there was a previous issue with Jimmy Oliver on or about April 10, 1985 whereby he entered our plant without notice to management. He arrived in our lunchroom with four stewards and asked Mike Seidelman and myself to join the meeting. We were not aware what the meeting was about. Mr. Oliver's behavior was totally objectionable with loud, *repeated* obscenities.

In the future, we expect a business-like, courteous approach with your union and its representatives.

While I totally understand and respect that our contract called for an inspection and I believe that you have the right to make an inspection, however, an advance notice is only proper.

In conclusion, John, as the new owner of the companies it is my intention to move them forward and expand our business to our mutual benefit. There are many obstacles to overcome. I am trying to structure a relationship with you that is obstacle-free. I will always treat you with the utmost respect and consideration and I expect the cooperation and respect from you and your representatives. By mutual cooperation, we can achieve a harmonious atmosphere for all.

And by letter dated May 7 (R. Exh. 213), Morris replied as follows:

In reference to your letter of May 1, 1985 be advised of the following:

A) The collective bargaining agreements for Noblits and A-M-A do not require that I or any representative of Local 115 call for an appointment prior to a shop visitation. Over twenty years we made many stop [sic] visitations to Noblits; if Mike was available to see us that was fine, if not then we made other arrangements. We are not required to make such an appointment to inspect the shop. It is not a matter of courtesy that we do so; we represent the workers and have a contractual right to be there. Mike Seidelman and other representatives of management (Arnold Hurvitz, Ted Haldis) have come to Local 115 with no previous appointment and we have taken time to see them. You should not be affronted because we want to talk to the members we have represented for twenty-five years.

B) We cannot have jobs being eliminated and combined. We have never that before and cannot have it

³⁷ Len Shore was formerly a salesman for Noblit. Additionally, Hesh Katz was hired by the end of April. Subsequently, four other people were hired to do telemarketing work. Just before being laid off Tollefsen was told by Meidar to apply for a telemarketing position. Tollefsen did, asking for more pay than he received in the showroom. He had an interview in April but he was not hired. Tollefsen testified that the former personnel manager, Anita Prehm, who also helped Feder develop the telemarketing program and the telemarketing training seminar, told him that telemarketers would take orders and put them directly into the computer.

now. In previous conversations you have said the company was not being run properly but if that was so how did it become so successful? Buying flowers is all well and good, but we can't have you making automatic changes, combining jobs and side-stepping the Union to deal directly with the employees. We are not going to forfeit our representational rights just because there is new management. You would have had Tiny and Carol moving material on forklift trucks and doing other jobs with people laid-off and that is a violation of our contract.

D) [sic] For you to side-step the Union and go directly to workers, without a representative of the Union being present at the conversation, to discuss the quality or quantity of work they produce (and to make some threats as to what might happen if they don't improve) is also a violation of agreement. The Steward said the employees told her what you did and at our meeting you claimed the Steward didn't know what she was talking about. She was referring to you going directly to the employees and bypassing the Union.

C) As to the recall of Terry Smith and the other two workers, we agreed on Monday that they should return to work and we advised them to report as soon as possible. Tuesday was the first day they could do so. I do not know why this would confuse you; everyone else understood it and there was no intent to deceive you.

D) [sic] As regards the meeting of April 10th, Jimmy Oliver entered the plant in the same manner he always has and talked to the Stewards. He asked Mike and you to join them so you could find out what the meeting was all about. Jimmy has been in that plant many times over the years, he has handled many problems and he has worked to see that grievances are settled quickly. It is not necessary for you to tell him how to talk.

Local 115 is willing to work with you but we will not stand by while our contract or past practices are violated. We have had a good relationship down there for many years and we do not want you to spoil that.

As of May 1 the form used by the switchboard operator for noting who received how many calls (G.C. Exh. 72) was modified to delete STORE.³⁸ Among the additions to the form, were the names of Dennis Seidelman who became a customer service representative, and Shore who eventually became head of the customer service representatives.

Michael Seidelman, who for some time tallied the number of calls received, from the above-described log, on a daily basis, testified that he did not make these aforementioned changes in the form; that notwithstanding this and the fact that on a daily basis, he added up the calls for a couple of weeks on the modified form, he was not aware of this modification; and that he saw in May 1985 that STORE was changed to Dennis Seidelman.

Dennis Seidelman ceased being showroom manager and became, as indicated above, a customer service representative

in the beginning of May.³⁹ His successor, Allen Scotkin, testified that during the approximately 2.5 months he was in charge of the showroom there were only two telephones in that department; that Rosato asked to be transferred to the warehouse and Gershkovitz asked to stay in the showroom but indicated that he despised answering the telephone. Assertedly, after conferring with Haldis, Rosato, and Gershkovitz, Scotkin told switchboard operator Hepworth to send all sales calls to customer service representatives. Gershkovitz subsequently testified that he never told Scotkin that he did not want to take telephone sales calls in the showroom and he did not agree with Scotkin not to take sales calls in the showroom. Gershkovitz testified that he liked to take phone orders because he liked talking to people from all over the country. Rosato testified that after the showroom was reduced and only he and Gershkovitz worked in it his supervisor, Dennis Seidelman, told them that they would not be taking anymore telephone sales calls anymore and such calls would be sent to the telemarketers; and that subsequently telemarketers would ask his help regarding telephone sales calls. Rosato was eventually transferred to the warehouse. Hepworth testified that Scotkin never told her to stop sending sales calls to the showroom and to send those calls to customer service representatives.

On May 9 some union members⁴⁰ at Noblit/AMA went to the Union's offices and met with Sheahan and Oliver. Regarding what was said at this meeting, Sheahan testified that Shields and Dominguez expressed concern about work being taken away from union clericals and given to nonunion people; and that Shields expressed concern about the establishment of a telecommunications system and the fact that union clericals were not being trained to participate in the system. Notes taken by Sheahan (G.C. Exh. 58)⁴¹ reflect not only the above-described concerns but also, among other things, Shields' fear that the new system will be used by salesmen to enter orders directly in the computer bypassing union order-writers.

Sometime in June 1985 telemarketers received a telemarketing manual (G.C. Exh. 99). About that time telemarketers and customer service representatives began to log in their telephone calls (i.e., G.C. Exh. 79).

Assertedly, in June 1985 Shields called Oliver and complained that Noblit was making all kinds of changes and the union clericals' work was being taken away and they were being harassed by management. According to his testimony, Oliver went to Noblit, interviewed some of the union members and went to see Haldis again. Also, according to Oli-

³⁹ As a customer service representative, Seidelman testified that he transferred calls involving credit and billing to the credit department. During the construction of the reduced showroom, while he was still its manager, Dennis Seidelman assertedly told switchboard operator Hepworth that the two employees in the showroom could not handle the calls.

⁴⁰ Specifically named were Shields, Fisher, Dominguez.

⁴¹ This exhibit was typed from Sheahan's handwritten notes within day or two of the meeting. Referenced therein and attached thereto is a daily production report for the warehouse. Also attached thereto is a copy of a memorandum given to Sheahan at the meeting. The memorandum, dated May 1, is to all Noblit employees from Meidar. It asks employees to meet with Meidar and "share with . . . [him] any opinions and/or ideas regarding . . . [the] company." The notes also indicate that Dominguez was no longer permanent relief switchboard operator.

³⁸ The Store-part of the form consisted of 3 lines of 33 boxes each which were checked off one at a time as incoming phone calls were sent from the switchboard to the showroom. Each of the customer service representatives had 1 line with 33 boxes. If that was not enough the switchboard operator utilized a second identical sheet to note the number of calls received.

ver's testimony, after explaining to Oliver that henceforth Alan Lentz would represent the Company in labor matters (Lentz testified that he began working at Noblit on July 9), Haldis and Oliver discussed the changes in hours with Oliver asserting that it was a violation of the bargaining agreement. Oliver also told Haldis that WMOs were again taken away from union clericals. Haldis denied this and then he went to see Meidar. Upon his return, according to the testimony of Oliver, Haldis said that he spoke to Meidar; that Meidar was making changes again; and that "as soon as the changes are done this time, I assure you, I guarantee you. You will be given back the work."⁴²

About mid-June 1985 Haldis asked Kunevich to prepare a typed explanation of what a WMO is. Based on her experience alone, she prepared a 2-page document, dated June 18 (R. Exh. 174) and turned it over to Haldis. In pertinent part it reads as follows:

Currently, WMOs are readily answered via the computer inquiry program. Shipping (order delivery) has improved to the point that orders are received before customers question their delivery.

In providing a customer with WMO information, the perfect opportunity is created to increase a sale. by the time back ordered merchandise is received, an account may require other goods to ship along with the back order, thereby reducing his freight factor influence on profit.

The need for complete and accurate information on non-delivered goods is essential to increasing sales and customer relations.

It is Shields' testimony that in July Oliver came to Noblit at her request and they met with Haldis, who insisted "that it took a long time for changes to be made and that . . . the work was not being taken away, we had to be patient with it, and that it was going to be returned." On the other hand, Haldis testified that he did not tell Oliver and Shields that the WMOs would be returned to union clericals. Shields also testified that she asked Haldis if union clericals could learn telemarketing since they were order writers and knew the hardware. Assertedly, Haldis replied that they, however, did not have enough experience in hardware to do the job.

Just after returning from the July 1985 vacation shutdown, Meidar, according to Hepworth's testimony, told her "to give all the sales calls to the telemarketers and not to put them into the showroom." Meidar denies this asserting that he would not have told Hepworth what to do but rather he would have told Hepworth's supervisor.

Hepworth testified that in July 1985 she was told by Feder that specific people were no longer customer service representatives but were telemarketers; and that Katz and Martin were hired as telemarketers in late July 1985.⁴³

⁴² Meidar testified that he was aware that Haldis had a meeting with union representatives about WMOs; that Haldis spoke to him about WMOs once, and he had no idea what WMOs were before Haldis told him; that Haldis told him that there was very little WMO work left and that he told Haldis that if "you do not have WMOs, they are gone."

⁴³ Oliver testified that when he visited Noblit's facility in July 1985 he tried to go into a specified area of facility to determine if

Dominguez testified that she first heard the job title of telemarketers in July 1985 when Feder told her, as relief switchboard operator, to refer calls to the "telemarketing area." More specifically Dominguez testified that she was told by Feder to give "billing calls, relating to the customer, [a]nd also where is my order and incoming orders [to] . . . telemarketing." Feder denies this.

Regarding July 1985, Dominguez also testified that Gormley told her not to go into the telemarketing area; that once when she was in this area she saw a telemarketer putting an order entry program on a computer screen; and that while going through the telemarketing area she saw, more than once, a WMO program on a computer screen. Then Dominguez testified that Meidar asked her why she was in the telemarketing area and subsequently, in April 1985, she was relieved of her switchboard relief operator duties. Subsequently she testified that she was not sure when she was relieved but she believed it was sometime in late June or July.

With respect to order entry programs at Noblit, Tumolo testified that before Meidar purchased Respondent there were unsuccessful attempts made to utilize a computer order entry program; that after Meidar purchased the Company he hired a specialist to revise the order entry program and the specialist managed to put together a computer program which eliminated the first couple of steps in the order processing job; that the program was used on an experimental basis for 2 weeks in June or July 1985 but it ended up being a disaster because the shipping orders were duplicating themselves; and that after 2 weeks she was instructed to revert back to the original way of entering orders.

Senuik testified that before the end of September 1985 with the order entry system utilized the information was entered and validated by a batch process, corrections were made, and there were several manual steps that had to be done in the entry process; and that after getting all the bugs out of the system, Noblit began successfully using a computer order entry program which eliminated the above-described manual steps in September 1985. Zimmerman also testified that there were problems with the computer order entry and that at least 1 to 2 months before the strike, which began the first week in September 1985, Noblit went back to the old system of order entry.

In July 1985 Gormley told Zimmerman to review departmental work and see if there were ways that the operation could be streamlined. Zimmerman proposed raising from \$5 to \$10 those customers underpayments which would not require a followup by Noblit. Up to that time it was Noblit's policy that if a customer underpaid a bill by \$5 or less Noblit would not write to the customer regarding the discrepancy. The amount would be "taken off the books" by Noblit. Zimmerman believed that it was not worth the time to follow up on matters involving \$10 or less. Gormley and Lentz agreed, and the policy was changed. Although he had not checked whether union clericals complied in the past with the \$5 limit, Zimmerman testified that he had a "feeling" that they had not and so he began checking on the union clericals to make sure they complied with the \$10 limit. According to the testimony of Albertson, at some point after March 1985 her job duties as an accounts receivable

the people working in the cubicles located in that area were doing WMOs. Haldis would not allow Oliver to go into this area.

clerk changed in that her supervisor, Zimmerman, notified her that for the first time he was going to take the checks “priorize them, decide and make decisions on them. Decide what the problems were and sometimes following it through himself. Decide which ones should not be worked, and tell me what the problems were.” Regarding the streamlining procedures recommended by Zimmerman, he testified that in the past he studied the problems in his department for 2 weeks and two-thirds of the problems were in the \$1 to \$10 range; and that it was his impression that union clericals liked to keep their work. Zimmerman was aware of a grievance meeting in late July 1985 regarding this change in policy but it was held on a day that he did not work. Gormley did attend the meeting with Lentz representing the Company. Oliver and Bob Henninger represented the Union and steward Shields was present. The bookkeeper involved, Albertson, was also present. The Union took the position that union clericals always researched the remittances regardless of what was involved. The Company took the position that the union clericals were performing needless work and it was not cost effective to spend a lot of time looking into the matter which did not amount to much and should automatically be written off. Gormley testified that

[i]t was concluded by the union apparently agreeing with the company position that it was a management prerogative to review these remittances . . . and determine what one should be looked into further by the unit . . . personnel.

According to Gormley’s testimony, Henninger commented: “if they . . . [want] to cut their own throat, let them do it.”

Lentz attended another grievance meeting with Oliver in July or August 1985. Some union stewards at Noblit had taken a day off and they were not paid for the day. Oliver and the stewards went to Lentz’ office and demanded that they be paid for the day in question. Oliver told Lentz “if these people didn’t get paid, I’ll have everybody out on the streets tomorrow.” Lentz agreed to pay the stewards for the day in question with the understanding, accepted by Oliver, that the stewards would give Noblit, as here pertinent, 24-hour notice if they were going to take any time off. Oliver testified that he did not recall this meeting.

Perhaps as early as July 1985 Martin Wald, one of Respondent’s attorneys, advised management that in view of upcoming negotiations it should have replacements available in case a strike occurs.

On July 25 a special meeting was held at the Union’s facilities, with Respondent’s union employees in attendance, to discuss the upcoming contract negotiations. Representing the Union at the meeting were Morris, Oliver, Smith, and Henninger. The Union’s contract proposals (R. Exh. 1) were read and discussed.⁴⁴ Their author, James Smith, testified

that he did not include the topic of telemarketing or non-union personnel doing bargaining unit work was because “it was a topic that was being discussed and not really denied or not really agreed to and I didn’t think it would be a proposal that we would make in negotiations to be added to the contract.” Regarding this meeting, Smith spoke with Tumolo, Shields, and Hepworth about the fact that union clericals still did not get back the work which was the subject of the above-described April 29 meeting. Tumolo testified that the loss of bargaining unit work was not included in the above-described proposal because Haldis promised that it would be returned and at the time she believed the work would be returned.

The parties stipulated that Noblit/AMA installed 5 toll-free 800-lines at its facility in August 1985. As noted supra 3 of these 800-lines bypassed the switchboard. Hepworth testified that she “noticed . . . a change in the number of billing calls being sent to the unit clericals” in that before the toll-free 800 lines “they must have gotten . . . at least thirty a day” and after the installation of the 800-lines they received “[ten] maybe twelve tops, if that.” Albertson corroborated this testifying that after the 800-lines were installed the complaint calls she formerly received went directly to telemarketers and were not transferred to her. Nonetheless Albertson was kept busy with her other work, cross-training, and pulling old files. Tumolo testified that she personally received 40 to 50 calls a day about billing problems before the 800-lines. After the 800-lines were installed, according to Tumolo’s testimony, she handled only about four or five problem calls a day.

Stojak, who started as a customer service representative at Noblit on August 5, 1985, and who had an 800-telephone

3. *Pension*: The Employer will contribute \$65.00 per week, per Teamsters Union Local No. 115 Pension Plan.

4. *Legal Fund*: The Employer will contribute \$8.00 per week, per employee to the Teamsters Union Local No. 115 Legal Fund.

5. *Holidays*: Two (2) additional.

6. *Vacation*: The Vacation Schedule will be improved as follows:

- week for 1 year
- 2 weeks for 2 years
- 3 weeks for 5 years
- 4 weeks for 10 years
- 5 weeks for 15 years
- 6 weeks for 20 years

7. *Sick Leave*: Three (3) Additional Paid Working Days per year.

8. *Funeral Leave*: One (1) Additional Paid Day.

9. *Cost of Living*:

A. The formula is to provide for an increase of 1 . . . [cent] per hour for each .3 point change in the consumer price index over a period to be scheduled by the union.

B. Cost of Living adjustments shall be effective five (5) times during the term of the agreement on dates to be scheduled by the Union.

CONTRACT DEMANDS

C. Increases shall be applied to hourly rates and become part of the wage base.

D. There shall be no caps.

E. There shall be no adjustments made for decreases in the consumer price index.

10. *Job Security for A.M.A. Manufacturing Work*

11. *Severance and Re-Employment Benefits for Laid-Off A.M.A. Manufacturing Workers*

12. The Union reserves the right to add to or to make any changes in our proposals during the course of negotiations.

⁴⁴ They read as follows:

CONTRACT DEMANDS:

1. *Wages*: Increase of 10% to be added to the average hourly wage rate for all employees.

Truck drivers and fork lift drivers will continue to receive the M.T.L.R. rates.

2. *Health and Welfare*: The Employer will contribute \$67.70 per week, per employee to the Teamsters Union Local No. 115 Health and Welfare Fund.

line, testified that most of the 800-calls came from the Company's own sales representatives; that Feder told her to send billing problems to Zimmerman; that Feder did not tell her to send billing problems to Albertson or Tumolo; that she would not answer customers' questions regarding balance or average in the account;⁴⁵ and that she entered questions regarding billing by longhand on a form which went to the billing area.⁴⁶ Zimmerman, as noted above, testified that the unit clericals in accounts receivable, namely, Albertson, Tumolo, and Hurvitz, did not receive 40 to 50 calls a day but rather each received about five calls a day; that Breggar and Blakely transferred billing question calls to him and he answered them himself; and that there were no changes regarding handling billing problems after Meidar purchased Noblit.

With respect to WMOs, Stojak testified that she was trained to handle WMOs utilizing a computer program; that she was not taught the procedure regarding putting WMOs on the bulletin board;⁴⁷ and that she may have asked Childs, Tumolo, and other union clericals where some items were filed with respect to WMOs.⁴⁸

The first negotiating session on the new contracts between Respondent and the Union was held on August 20. The following are James Smith's notes of the meeting:

Noblits—A.M.A. Negotiations

1st Meeting

Tuesday, August 20, 1985—7:10 P.M.—at Local #115

For the Company: Allan Lentz, Mike Seidelman, Andy Gormley, Bill Obergfell

For the Union: John P. Morris, Gerald Sheahan, Jim Smith, Tiny Lupton, Tom Fisher, Marion Shields, Carol Anderson

Morris: Open meeting stating always had good relationship with Mike Seidelman & hopes it continues

Lentz: Stated he expected the good relationship to continue & state that he, Allan Lentz, would be the company spokesman he reviewed the contract proposals submitted to him & his committee.

Lentz: What do you mean by job security

Morris: Our jobs & our work

⁴⁵ Stojak testified that when she started working at Noblit she was not taught how to access accounts receivable information; that it was not part of her training but at one point she watched Zimmerman use the WMO program to access accounts receivable information; that subsequently she used it occasionally to determine what the problem was; and that she never answered inquiries utilizing this information but rather Stojak sent the inquiries to Zimmerman.

⁴⁶ Stojak also testified that she did not enter the telephone orders into the computer. Seniak testified that customer service representatives have never been trained to put orders in the computer; and that after the aforementioned strike commenced people were hired to enter orders into the computer.

⁴⁷ Breggar testified that he told new telemarketers and customer service representatives that if they could not find the information on the screen to answer a WMO, they should post a WMO form on the bulletin board. Breggar also testified that there were few WMO calls and they could be handled by using the "screen"; and that there was no directive not to use the WMO form.

⁴⁸ At least two union clericals, Albertson and Dominguez, testified that telemarketers would come to their area and ask them how to research a WMO.

Lentz: Guarantees of work or jobs? Whether there is work there or not?

Morris: You are phasing work out—for example—selling of shears

Lentz: We don't have the business anymore

Morris: What are you doing with the employees & how will it affect them?

Lentz: Trying to sell 3 shears that haven't been used in years

Morris: Long time employees are involved here

Morris: Only have 9 shears there

Seidelman: 11 or 12 shears are there

Morris: We use only 6

Seidelman: So, we will only use 4 or 5

Lentz: Do you have a specific number of weeks for a number of years service?

Morris: Yes, that & what will become of the other employees? We want AMA peopled transferred to Noblits warehouse that you are expanding so much

Lentz: What is length of contract—1 year?

Morris: That's what we say

Morris: What of AMA work?

Lentz: AMA work?

Seidelman: Let me tell you what I told John Morris. The factory last year lost \$246,000. Year before we probably lost money, but didn't show because of combined operations

We lost 50% of our market share

Lost Sears business—\$2 million volume per year

Sears got their own plant & we'll never get business back

Remington was our 2nd biggest customer & they are in Chapter 11

Those 2 accounts were 33–1/3% of work in plant & we'll never get it back

Rest of work we financially can't do it

The operation was an ego situation & we lost money on it

The Company can't survive on what we were losing money on

We sell kickplates for \$4.50 & it costs \$5.85 to produce

Only hope in making business grow is to expand hardware part of business that comes mainly from overseas & sell to hardware stores & lumber yards

We are putting in a whole new telemarketing system & merchandising program

We'll expand our merchandising & hardware business—our manufacturing business is doomed—now we are hanging in at a loss or breaking even

Morris: Why are you bringing in new people then?

Seidelman: Manufacturing business is just a loss—

Lentz: AMA is now manufacturer of last resort. We get order when everyone else is too busy to take orders

Our competition down the street pays \$6.00 per hour

Morris: That's a whole lot of nothing. How will it affect us & how long will we have jobs?

Lentz: I don't know how long it will last

Lentz: We asked people no to take vacations because our business was unpredictable & we needed the people to work. The people scheduled on vacation were the shear & press operators & we needed them

Morris: Will this business be there for a year?

Lentz: I don't know—if that is not a predictable answer then we got a big problem.

Morris: We want an answer.

Lentz: There is no answer.

Morris: Then bring in the people who can give us an answer.

Seidelman: This is busiest month of the year in shop has always been August we are down 50% of business from last year. We are busy. But not as busy as previous years. We have 3 weeks left of work in AMA as of today.

Morris: 10 new people in office.

Seidelman: 4.

Morris: 4 in last week.

Andy Gormley: Most are inside sales people vs. outside sales.

Seidelman: Need to build up wrehouse part through things like telemarketing.

Lentz: Telephone sales people are commission people—not in union.

Morris: The problem is all this stuff going around us has gone far enough & we want some answers people working at night after we leave.

Lentz: No one is working at night we have meetings on Monday & Thursday nights.

Morris: Are they learning our jobs at night?

Seidelman: No—straight cut no! This business needed a radical change—lost money in that factory. Business to survive must change.

Morris: People losing their jobs. There has to be some decent way of treating them. Don't want the business—you'll stay in business as long as you have sales. No one buys that.

Lentz: We offer people jobs as long as there is a business.

Morris: There jobs are gone & what are you going to do about it? That's what we want to know.

Lentz: Ask you for your proposal on severance & you haven't given it to us.

Morris: You tell us what you are going to do & we will respond. Want understanding on what will laid off people get & also opportunity for them to be part of that expansion in warehouse portion.

You got rid of Burt Moore & the truck & then bring in non-union carriers.

Lentz: We go with the cheapest cost—that's America. As management its our responsibility, on your behalf, to run the business as efficiently as possible.

Seidelman: Losing business because Burt couldn't be in 5 different parts of city at one time. Truck was old costly & we couldn't service customers. Losing [sic] accounts because Burt could not be 10 places at once.

Morris: Wont unload any non-union carriers in there anymore. Where's Burt's truck?

Seidelman: We got rid of it months ago. Can't have a truck service the Delaware Valley & get good service.

Marian Shields: G & D is doing local deliveries where Burt used to same routes.

Lentz: Union carriers will not service the local area—too costly for union carrier will not service local area.

Morris: UPS is there everyday.

Lentz: It's cheaper to go non-union—its a fact.

Seidelman: No immediate plans for building up more shelving. I don't know what will happen.

Lentz: I don't know what's going to happen & we won't know by September.

Morris: You're expecting other people to abandon AMA?

Lentz: No, we don't know what's going to happen to AMA.

Morris: Then, get an answer because that is what they want to know.

Lentz: A plan for running the business is our responsibility.

Morris: Anything affecting the jobs is our responsibility too.

Lentz: I am talking about the running of the business. The next meeting we'll have proposals regarding job security transfers to Noblits—severance & re-employment benefits AMA is no more than 20% of the business. Mo didn't understand everything about the business when he bought it. Still learning he didn't buy it to lose money—its a business.

Morris: These people want some answers & they're entitled to that.

Lentz: I agree—they don't want bullshit.

Seidelman: Next meeting will have to come up with some answers to where you want to go.

Next meeting scheduled for Tuesday, August 27, 1985—7:00 p.m. at Local No. 115.

Meeting ended at 8:50 p.m.

Lentz' notes of the session (R. Exh. 185) are somewhat shorter:

AMA

Telemarketing

People working (being in) in the office after 5 p.m.—doing union work?

Don't unload any non-union carrier

—non union carrier doing union driver work

Want AMA employees to work for Noblit

During this meeting the Union presented its above-described economic proposals to the Respondent. Also Morris said that the Union wanted a 1-year contract.

Toward the end of the meeting, Shields said to Morris that telemarketers are performing unit clerical's work. Michael Seidelman then said that was not the case.

According to Lentz' un rebutted testimony, at this first session Morris said that he had strike authorization.⁴⁹ Lentz also testified that after this session Respondent placed newspaper ads for replacement employees.⁵⁰

Sheahan testified that he first learned about the 800 lines bypassing the switchboard operator on August 20. Meidar, who did not attend this session,⁵¹ testified that he did not

⁴⁹ As noted, *infra*, at this point in time the union members had not authorized a strike.

⁵⁰ A representative of Wald's firm assisted in the interviewing process.

⁵¹ Meidar testified that he had been taught that a person in his position should not get involved in negotiation so as to retain his objectivity.

seek the permission of the Union for the 800 lines because he did not believe that he needed it.

As stipulated to by the parties, Respondent entered into a contract with Boyd on August 22 whereby Boyd agreed to provide security services for Respondent "in connection with the possible strike and picketing of Respondent which began on September 4, 1985." (G.C. Exh. 3).

The second contract negotiation session between Respondent and the Union occurred on August 27. The following are Sheahan's notes of the session (G.C. Exh. 54):

Meeting at 7PM on Tuesday, August 27, 1985

Attending for the Company: Marty Wald, Allan Lentz, Mike Seidelman, Andy Gormley and Bill Obergfell—

For the Union: John Morris, Gerry Sheahan, Tiny Lupton, Tom Fisher, Carol Anderson, Joslyn Dean.

Wald opened the meeting by passing out a cost analysis of the Union's contract proposal. He also gave out a reprint of an Inquirer article about the small increase in inflation. Wald also gave out the company's proposal on language and economics.

Wald was asked where Mo was. Wald said Mo couldn't make it but he (Wald) was there to negotiate a contract.

Wald was told the Union gave no contract language proposals. We said we didn't propose any language changes and now Wald was proposing many changes.

On his #1 proposal we pointed out we had never had a strike or an arbitration and there was no need for changes. We had a long bargaining relationship that had worked well.

We asked Wald why they wanted to change the Grievance Procedure. He replied that most employers have binding arbitration. We said we had never had a strike, or slow down and the existing grievance procedure worked ok, why change it. He said binding arbitration common everywhere.

On his #2 proposal [which deals with drug and alcohol test, as more fully set forth infra] we asked why they wanted it. He gave no specifics as to why it was needed but said they believed it should be in the contract.

On his #3 proposal [which deals with the elimination of the Union's right to approve work rules] we told him that work rules should continue to be approved by the Union and the change was unnecessary. We told them that all the language changes they wanted was a sign they wanted hardball negotiations because they were changing long-standing contract language and the changes were not justified. they said they felt they were necessary.

We asked them if they had a proposal on A-M-A and they said they had none. We said Lentz said last week he would have a proposal this week. We said that the company didn't care about the A-M-A employees. We knew the company had just hired two "telemarketers" and asked why laid off A-M-A employees had not been interviewed for the jobs. Wald said they could not do the work. We told him that the "telemarketers" were doing work our people did and our people could do it. Wald said Mo did not believe they

could do the work. We told Wald to bring Mo to the negotiations. Wald [said] he had the authority to settle and said let's wrap it up tonight. We said we couldn't reach an agreement with all the language he had on the table so the meeting ended.

The cost analysis (R. Exh. 186) Wald passed out at this session is a four-page computer printout in which it is concluded that the total package proposed by the Union would increase the labor cost per hour worked about 19 percent from \$16.41 to \$19.56.

The company proposals submitted to the Union on August 27 (R. Exh. 187), read as follows:

1. ARTICLE VII—GRIEVANCE PROCEDURE

Sections 1 to 4 inclusive—

Substitute mandatory grievance and arbitration procedure—draft attached. [See R. Exh. 188]

2. ARTICLE VIII—Discipline: Add Section (f) to Article VIII-l(d) as follows: "Refusal to take a medical examination to test for the consumption of liquor and/or the use of drugs."

3. ARTICLE VIII—Discipline—

Section 4—Eliminate the words "and are approved by the Union" from the first sentence. Eliminate the word "approved" from the second sentence. Rules and regulations are the province of the Employer subject to the grievance and arbitration procedures.

4. ARTICLE XVII—Holidays

Advance notice of 48 hours shall be required before an employee may take a personal holiday.

5. ARTICLE XVIII—Maintenance of Standards

Eliminate the present language and substitute the following: "The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differential, and general working conditions, as negotiated or agreed upon, shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement and the conditions of employment shall be improved wherever specific provisions for improvements are made elsewhere in this Agreement."

The "maintenance of standards" concept shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms conditions of this Agreement.

6. ARTICLE XXI—Stewards—

Section 4—Add the following: "Stewards shall confine their time in connection with grievances to reasonable limits and shall not leave a work station or cease to perform a work assignment until receiving approval from the steward's foreman." A steward shall not be involved in a grievance until the employee has first discussed it with his, i.e., the employee's, foreman. If processing of a grievance cannot be conveniently done during working hours or when the steward requests, "a mutually convenient time for the meeting shall be set." For "off premises" duties, advance notice of 24 hours shall be given.

7. ARTICLE XXIII—Seniority

Section 6—Add the words: “To the extent allowed by law” so that the parties do not violate the National Labor Relations Board rules regarding super-seniority.

8. *ARTICLE XXIII—Seniority*

Section 7—To be eliminated or clarified. Present language is not clear.

9. *ARTICLE XXIII—Seniority*

Section 8(D)(2)—Add the following sentence: “In order to be called back the employee must be qualified, without additional training, to perform the work needed.”

10. *ARTICLE XXIII—Seniority*

Section 13 - Add the words: “provided the employees who chooses to select another job is qualified to perform the work in that job without additional training.”

11. *ARTICLE XVII—Welfare, Pension, Scholarship and Legal Benefits*

Eliminate *Section 22* which allows for strikes during the term of the Agreement.

12. *ARTICLE XXIX—SUCCESSORS and ASSIGNS*

Eliminate entire Article as it presently reads and substitute: “The Employer shall not be restricted in the sale of all or part of its business.”

13. The Company shall have the right to hire a Confidential Secretary and such person shall not be in the bargaining unit.

14. THE COMPANIES RESERVE THE RIGHT TO ADD OR TO MAKE ANY CHANGES IN THEIR PROPOSALS DURING THE COURSE OF NEGOTIATIONS.

The Company also responded (R. Exh. 189), to the Union’s above-described proposals as follows:

1. *Wages*—

A) The Company agrees to the Union proposition for the need for a wage increase. Therefore, the Company is offering a wage increase of \$.15 per hour.

B) As far as the truck driver and the fork lift operators, the Company rejects the proposal of MTLR rates. The Company believes that all employees belong to the same Union and should be bound by the same Union contract.

2. *Health and Welfare*—The Company agrees with the Union proposal that Health and Welfare should be raised. The Company offers to raise the Health and Welfare contribution by \$2.00 per week, to \$49.70 per week.

3. *Pension*—The Company agrees with the Union request for an increase in pension payment. The Company offers an additional \$2.00 per week, to \$47.00 per week.

4. *Legal Fund*—The Company rejects any increase in the Legal Fund contribution to the Union.

5. *Holidays*—The Company agrees that our employees deserve an additional one-day holiday and believes that should be Martin Luther King’s Birthday.

6. *Vacation*—The Company believes that the current vacation schedule is adequate. There shall be no change in any vacations.

7. No changes. The Union proposed three additional paid sick leave days a year.]

8. No changes. [The Union proposed one additional paid funeral leave day.]

9. *Cost of Living*—The Company agrees to one cost of living increase in a one year contract after six months of the contract.

10. To be discussed.

11. The Management of Noblit Brothers will be happy to entertain the Union proposal of severance pay for A.M.A. employees.

12. The Management accepts the Union Request for a one year contract.

Morris rejected all of the above-described Company’s proposed language changes, indicating that the mandatory grievance and arbitration procedure and the proposed addition to article XXI regarding stewards were “strike issues.”

Meidar testified that he absolutely was not going to agree to any contract that did not have a mandatory arbitration clause. While Meidar also wanted the successor and assigns clause eliminated from the contract, he testified that he was willing to resolve that issue with a “side letter.”

Respondent placed the following ad in the Philadelphia Inquirer. The copy introduced herein (G.C. Exh. 8) apparently appeared in the August 28 and August 29 editions.⁵² It reads as follows:

MANUFACTURING WORKERS

Press Operators, Forklift, Light Assembly work for temporary employment. Apply in person 5 p.m. Aug 26 to Aug 30. Treadway Inn 4200 Roosevelt Blvd. Phil. Ask For Mr. Jackson. No phone calls.

The next negotiation session was held on August 29. Sheahan’s notes of the meeting (G.C. Exh. 55), read as follows:

Meeting Thursday August 29th at 7PM at Union. For the Company: Marty Wald, Allan Lentz, Mike Seidelman, Andy Gormley and Bill Obergfell.

For the Union: John Morris, Gerry Sheahan, Tiny Lupton, Tom Fisher, Carol Anderson, Joslyn Dean.

Meeting started with each side asking the other what they were going to do. Marty said to John you and I had better get together. Wald, Morris and Sheahan went to next conference room. Morris said you want to get this straightened out and Wald said yes. Morris said you put a lot of shit on the table and Wald said so did you. Wald said we know what you’ve been getting. He said you’ve been settling all over town for 50 50 50 and some increases in fund money and we can live with that. Wald said they had a real problem with A-M-A. We said A-M-A is a real problem because many of the people who work there were black women and they had high seniority. We were concerned that Arnold Hurvitz (who had left the company) would buy A-M-A and run it in another location. Marty said they were not selling

⁵² The wording of the ad “Apply in person . . . August 26 to August 30” would suggest that this ad appeared in the newspaper before August 28.

it to Arnold and would give a side letter to the union if we wanted one on that point.

We discussed the possibility that the women from A-M-A could file some legal action if they were laid-off and less senior white workers were retained at Noblits. Wald did not think that would happen. The Union called its attorney, Dick Markowitz, and discussed it with him. Wald also talked to Markowitz on the phone about this and they agreed that something should be done to protect the A-M-A workers if they were laid off.

When the conversation was finished Marty said what are you going to do on economics. He said what did you give to Trans-Atlantic, that's our competitor. We said he already had the Trans-Atlantic settlement because our people had seen it in the plant. He said we need something we can live with too. He was told he could get the Trans-Atlantic settlement. Marty said he didn't have a copy of the Trans-Atlantic settlement with him and Sheahan got a copy. It was reviewed with Marty and he copied it down. Wages: 55 . . . [cents] 50 [cents] . . . 50 [cents].

Health & Welfare \$5.00 increase the first year, \$5.00 the second year, and \$5.00 the third year; a \$2.00 increase in Legal Fund. We told Wald we wanted three \$5.00 increases in the pension too, and Wald said that Trans-Atlantic didn't get that because they weren't in the pension plan. Wald said he could go \$4 \$4 and \$4. We said that was ok and he asked what he needed for A-M-A people. He said they needed his #12 proposal as applied to A-M-A because the business was going down and that would have to sell it if they could.

It was agreed that the A-M-A workers, when laid off, would go to the bottom of all three seniority lists at Noblits (The warehouse list, the office list and the showroom list). When Noblits needed people they would offer it to these workers and they would get the jobs in accordance with the seniority provisions of the contract if they were qualified. Once they had the job their A-M-A seniority would be used in the future. Laid off A-M-A employees would receive 1 week severance pay for each year of service and they would get all their sick leave days and vacations as well in accordance with the contract language.

We told Marty the "telemarket" workers had to come into the unit because they were doing Local 115 work. He said he really didn't know what their job functions were, but if they were doing our work he had no problem with our position. He asked if that was the entire settlement and was told yes. He was asked if he accepted that and he said I don't have the authority to accept it, I only have the authority to reject it.

That caucus ended when Marty changed his position on what authority he had. The meeting was re-convened with the full committees and ended.⁵³

At the end of the side-bar meeting Morris grabbed Wald's notes. Sheahan testified that during the side-bar meeting the

Union accepted the Company's proposal, item 12 set forth supra, regarding successors and assigns:

We said as . . . [that] applies to AMA that would be okay, because he was giving us severance pay, and he was giving us the opportunity to those people to move to the Noblit side in the event that AMA went down the chute, for openings on the other side, and we knew that in exchange for that we were willing to do that, that was done

Wald testified that during the side-bar meeting he did not say that (A) the Company could live with 55, 50, and 50, (B) if telemarketers were doing union work he had no problem with including them in the Union, and (C) he had authority only to reject and not to accept a contract. Also, Wald testified that during the side-bar meeting the Union did not agree to any change in the successors and assigns clause, and the union representatives present did not claim that telemarketers were doing union work. According to Wald's testimony, he rejected the side-bar union proposal because it contradicted his authority and instructions in several respects, viz, it was for a 3-year contract vis-a-vis a 1-year contract, and it ruled out any language changes and he was operating under instructions not to yield on the grievance and arbitration clause and the past practice clause, and it would have ruled out any change in the successors clause. Wald met with Meidar and Lentz before this negotiation session, and at this meeting, Wald was instructed by Meidar to either do better than the Trans-Atlantic contract or settle for those terms but on a 1-year basis. Wald was instructed that he had to get closed-end arbitration. With respect to his handwritten notes covering the side-bar meeting (R. Exh. 207), Wald testified regarding the line that indicates 5, 5, 5 pension with 4, 4, 4 underneath, that the 4s do not mean that he counteroffered 4, 4, 4 but rather competitor Trans-Atlantic did not participate in the Local 115 pension plan, Morris said that the Union might be able to give Respondent a little leeway, and Wald inferred from this that he might be able to get Morris to accept 4, 4, 4 and so he wrote the 4s.⁵⁴

Both Lentz and Wald testified that at the reconvened joint session meeting with the full committees Wald asked Morris for a counteroffer and Morris replied that he had none.

Fisher testified that when Wald came back into the room where the bargaining committee was he, Fisher, overheard Wald say that he did not have authority to accept the contract, only to reject it.

On August 30 Meidar had the following letter distributed, (R. Exh. 214):

To: All Noblit Brothers Employees

From: M. I. Meidar

As I write this letter, I have no idea what will happen with regards to a possible strike. At this point, this is up to the leadership and membership of the Union. However, I want to take this opportunity to briefly report to you what has happened and why we have not

⁵³ Sheahan testified that when he typed his handwritten notes he did so "in a fashion that it will be clear for someone else to understand besides myself."

⁵⁴ Notwithstanding Sheahan's above-described assertion and the importance of this clause to Respondent, apparently no mention is made in Wald's notes about whether the Union agreed to the Company's proposal regarding the successors and assigns clause.

been able to reach an agreement with the Union. I will not attempt to cover all the issues in this short report, just two that I believe are of major importance.

I am attaching a copy of the original demands made by the Union and a schedule we prepared showing that the cost of the requested increase to the Company would be over 19%. **THIS IS THE ONLY OFFER THE UNION LEADERSHIP HAS MADE.**

Obviously, the Company cannot afford an increase in cost of over 19%. No company can and still stay in business. We proposed, as a first counter-offer, a wage increase of 15 cents an hour and increased payments for Health & Welfare, Pension, and an additional holiday, would . . . raise our total cost approximately 2.5% a figure slightly less than the existing rate of inflation. This offer was rejected by the Union leadership. m is rejection was expected and is a normal part of any labor organization. What we did not expect was that the Union leadership **REFUSED TO MAKE A COUNTEROFFER AND HAS NOT BEEN WILLING TO DO SO DESPITE REPEATED REQUESTS FROM US TO DO SO.**

There are other issues that have to be resolved, primarily involving the future of AMA and those who work there. The situation is very complex. It is not one that will be solved by the usual method of demand and counter-offer. It is one that can be solved by the Union and the Company working together in a spirit of mutual respect and cooperation. I believe we have developed the beginnings of a reasonable solution to that problem, and we are prepared to discuss our ideas with the Bargaining Committee, in an attempt to match the needs of the employees with the company's ability to re-train employees and/or pay severance pay. Unfortunately, this is an area where the Union leadership has not even made a request that can be answered nor has it offered any opportunity for a meaningful discussion and/or exchange of ideas. I believe that the matter is not one that can be solved just by paying severance pay, especially where those employees who have spent most of their lives working for this company, are concerned. However, this is an area where the Union leadership and members must tell us of their concerns, needs and requirements. To date this has not been done.

At this point, we have reached a deadlock, and it is a deadlock that only the Union leadership can break. I am ready to meet with the Union leadership and the members of the Bargaining Committee at any time to discuss a reasonable counter-offer. I offered to do that last night and the leadership refused. I offered to call in a mediator to help us resolve these problems and the leadership refused. I offered a "cooling off" period where work could proceed as normal and additional negotiating meetings could be held and the leadership refused. There is nothing else I can do without jeopardizing the future of the Company and the jobs of all who work here. Under no conditions will I agree to any settlement that will jeopardize the Company.

This Company will be open for business on Tuesday morning. I hope that the Union leadership will join with me in resolving our differences. I hope that you will be allowed to come to work as usual on Tuesday morning

so that you will be able to earn the income you need to support yourself and your family.

And he gave the following testimony regarding the subsequent events of that day:

[Fisher] said to me why in some kind of not pleasant language but why I am not a part of the negotiation. And I told him that that is not the place to discuss it and he told me something to the effect that he called me a mother fucker and told me that they will teach me a lesson and he something to the effect that I am an immigrant they are going to teach me what is American all about.

Meidar also testified that as each employee received the above-described letter Fisher took it from the employee and ripped it up. Assertedly only a few of the employees kept the letter. Meidar testified that he did not discipline Fisher because "it was not the time to discipline." Fisher denied both the alleged August 30 conversation and actions described in Meidar's testimony, as set forth above. Fisher conceded that he asked Meidar why he couldn't be at the meeting if he is the owner of the place.

Those of Respondent's employees who are represented by the Union attended a meeting at Local 115 on August 30. The following are Sheahan's notes of the meeting (G.C. Exh. 57):

AMA-NOBLITS—Meeting at 115, August 30, 1985, 5PM

John Morris, G. Sheahan, J. Yeoman

John: We met w/company Lentz was spokesperson, Wald wants changes in contract:

- a) Grievances would go to arbitration.
- b) want you to take exams and tests . . . [for] use of drugs/alcohol.
- c) Discipline—Company will approve rules.
- d) Holidays—want 48 hour notice for personals.
- e) Maintenance of Standards—Many changes.
- f) [Want] . . . change in steward clause.
- g) Seniority—changes aimed at dumping A-M-A.
- h) Don't want union to strike even if H&W delinquent.
- i) Wants successors/assigns changed.

We told company language was rejected.

Lentz only there two months—doesn't know anything about past.

Never had strike there.

Wage offer was 15 cents.

Talked about Royal Factories low rates. Told Lentz Seidelman had agreement to buy Royal but never did—don't blame low rates of Royal on 115.

Trans-Atlantic [TA] is competitor. Wald said he had full authority to settle contract.

Said we needed T/A settlement. Wald said he could live with it, but had problem with A-M-A. We worked it out, A-M-A people can come to Noblit if qualified. Once qualified they have their seniority. 1 week pay per year of service for severance. They get holiday, vacations, according to contract.

Telemarketing doing our work—should be in unit. Wald said no problem.

Wald then said he only had authority to say “no”—he could reject our proposal but could not negotiate on his own.

It’s unfair labor practice to take our work away. Noblit refused to bargain on it and walked out.

Vic told Hurvitz his job was to watch her.

Never had problems like this before Mo got here. He wants to strip contract—take your job away from you. They were bargaining in bad faith, law covers that. We go back to work Tuesday, if we don’t get agreement we strike on Wednesday over ulp’s.

Motion strike Wednesday AM—Tom Fisher second—Angie Powers Vote: Unanimous

Motion to adjourn: Marian Shields

Second: Joe Farrell

Meeting adjourns 5:45PM

A number of the employees testified about the meeting.⁵⁵ Some recalled that Morris said that the Company was engaging in an unfair labor practice. At least two were not sure in what context Morris used the term unfair labor practice. On the one hand, some testified that Morris discussed the Company proposals. Others testified, however, either that they did not recall Morris going over what the Company offered, or that he did not tell the employees at the meeting that the Company offered (1) a wage increase, (2) an increase in Health and Welfare benefits, (3) an increase in pension payments, (4) to give the employees an additional 1-day holiday, (5) a cost-of-living increase, and (6) proposed severance pay for AMA employees. At least one employee who attended the meeting, Gershkovitz, testified that Morris might have said that the Company wanted to cut employees salaries, and he, Gershkovitz, put this in an affidavit he gave on October 30.

During the morning of September 3, Union President Joseph Yeoman entered Meidar’s office at Noblit/AMA unannounced. Yeoman started to discuss matters which Meidar believed should be discussed at the negotiation sessions. When Meidar asked Yeoman why not discuss these matters at a negotiating session, Yeoman replied that Meidar refused to participate in the sessions. Meidar agreed to participate in that evenings negotiation session.

At some unspecified time between 7 a.m. and 3 p.m. on September 3 Officer Raymond Matthews, who at the time was in the civil affairs unit, which handles labor disputes, of the Philadelphia Police Department, following orders, entered Noblit/AMA to investigate a labor problem. He testified that during his investigation he spoke with a person, Bill Fisher, who identified himself as a shop steward of the Union.⁵⁶ According to Officer Reynolds’ testimony, Fisher said that on September 4 he and other employees intended to go on strike because “Noblit was going to cut their wages in half.” As

here pertinent, Officer Matthews’ notes of the investigation (R. Exh. 168) read as follows:

The assigned spoke with William Fisher, shop steward who stated that the employees will strike at 0500 hours on Wednesday, September 4, 1985, with approximately twenty (20) pickets some in front and some in back of the firm. Picketing will be conducted on a 24 hours basis with 4 to 5 pickets. The reason for the dispute is that Noblit wants to cut wages of the employees from \$11.00 a hour to \$6.00 a hour.

Sheahan’s notes of the September 3 negotiation session (G.C. Exh. 56) read as follows:

Meeting at 7PM on Tuesday, September 3, 1985 at Holiday Inn, 4th & Arch Streets. The meeting was set up by the company.

For the Company: Moshe Meidar, Marty Wald, Allan Lentz, Mike Seidelman, Andy Gormley and Bill Obergfell.

For the Union: John Morris, Gerry Sheahan, Joe Yeoman, Jim Oliver, Tiny Lupton, Tom Fisher, Carol Anderson, Joslyn Dean.

Mo [Meidar] opened meeting by saying that union offer so ridiculous it did not merit a counter-offer.

John said we always had settlements with Mike before. Now Lentz tells Mike to shut up. Lentz doesn’t understand the problem. Marty says he wants the settlement the other company got and then says he only has authority to reject it. Where are we supposed to go with that?

Mo said he had meeting with Joe Yeoman this morning. Yeoman said he was there because Mo had guards with guns in the plant.

John told Mo we just wanted the same settlement that were [sic] taking place all over. Said Employees can’t subsidize your business not asking for more than your competition got.

Mo said he didn’t care what other people paid. He said he made many changes. Alan replaced Arnold. Obergfell replaced former plant manager. Mo said he cut four people to pay his salary. Said he had plan for A-M-A that had a shot of working. Trying to turn company around.

John said you’re trying to turn us around.

Mo—No, we aren’t. Mo then asked Obergfell if there are too many people in warehouse. Obergfell said they could use less but they didn’t cut it.

John said business always had peaks and valleys—Our people got the work out regardless.

Mo said there was o/t. John said they had o/t when they had the orders. Told them they pay more for interest than for our people. You have 10 less people no in A-M-A. You have 2 less in the warehouse.

John said we did what Mike asked on truck drivers. Then you brought in non-union carriers. You don’t understand union integrity.

Mo said in event we have to sell A-M-A we must have agreement that we have that right. In the event we have to sell we want to give people severance.

John said we won’t give up successors clause.

⁵⁵ Shields, Hepworth, Albertson, Dominguez, Tumolo, Rosato, Lazarus, Roseanne Rafferty, and Gershkovitz.

⁵⁶ As noted above, there is a Tom Fisher who is employed in Noblit’s warehouse and who is a steward. Warehouse Manager Obergfell testified that he spoke with the civil affairs officer when he came into Noblit on September 3 and he, Obergfell, directed the officer to shop steward Fisher. Tom Fisher did not deny talking to Officer Matthews.

Mo said we could take 6 or 8 senior people and put 2 in office and 6 in warehouse—intermingle with rest of people.

Mo offered one week of severance for each week of vacation if people have to be laid off. Said if we sell shop it's easiest thing to do. The severance money could go for re-training.

Mo said Tiny will go to office—as soon as we have agreement she will work for Andy.

John said we always felt Tiny was qualified for office work. Why wasn't she given a telephone job?

Mo said Telemarketing is pure sales people.

GTS [Sheahan] said No they are not. They answer phones our girls answered. They are using same computer programs our girls use for order entry, and our showroom guys used to handle sales call before they came.

John—That's right, Mo. What about it?

Mo said we don't understand telephone sales people. They are only paid commission. Mike said they still get \$200 a week draw.

Mo said not any more, they don't. We to have use these people when we need them and get rid of them when we want to. Must be able to hire them, fire them, pressure them, use them and abuse them. You do not know salesmen if you don't think so. We can't be restricted by having them in union.

John said they are doing our work. That's why we want them in unit. We can't have non-union people doing our job below the rate.

Mo said they get paid commission.

GTS said but they are doing our work. We represent commissioned salespeople in Union elsewhere and a rate can be negotiated. We can't have them doing work our people do unless they are in the union. We have to protect our work. Whether you call them telesales or mail order clerks or whatever they are still doing union work. Just because you pay them commission and call them something else doesn't mean they are not doing our work.

Mo said we seemed to be at an impasse on this and should move on to something else.

Yeoman asked how can we move on to other issues like wages and health & welfare when we don't know who we are bargaining for? You have to get this straightened out.

At that point the company caucused. They returned after ten or fifteen minutes and Marty Wald said on the question of work telesales people doing it's non-negotiable point. They packed . . . their brief cases and left with the union committee still sitting at the table.

In conceding that the Union did not file a grievance over allegations that the Company took bargaining unit away, Sheahan pointed out that the contract expired on September 1. Sheahan also conceded that when he typed his handwritten notes he made changes but assertedly such modifications were made to make the notes more readable and he changed nothing of substance.

As explained on the witness stand by Wald while testifying herein, his notes of the September 3 session (R. Exh. 209) read as follows:

Section 3, 1985, joint meeting, for union—Oliver, . . . Shehan, Yeoman, et al. . . . [meaning] the union committee. Morris wasn't there at the beginning, but he came in somewhat later. Company . . . Meidar, . . . Lentz, . . . Obertfeld [Oberghell], Gormley, Mike Seidelman, and Wald. Seven thirty p.m. we started. . . [the] [j]oint meeting . . . No . . . union counter offer . . . company offer rejected, . . . AMA proposal, side letter of sales business in lieu of eliminating article XXVIX Roman 29. severance pay. 9:07 . . . Morris, . . . contract goes with sale, 9:08 . . . Meidar, six to eight senior people— two to office, six to warehouse, intermingled. To others severance equal vaction [sic] schedule. . . . Tiny to go to office with settlement. . . . Hicks transferred by seniority. And office, . . . two warehouse by seniority. . . . Warehouse junior employees to be laid off. Six to warehouse . . . [Meidar] possibly six to be laid off in warehouse, . . . Mike Seidelman. Two to be laid off. . . . Two to be laid off in office. . . . Meidar. Trying to bring company's in, only hope, equal industrial distributor, target is automotive industry, etc. plumbing. . . . Sheahan Telemarketing. MM [Meidar] only works if there is commission. . . . employees will produce or leave—sales while responding to "where is my order." Morris and . . . Sheahan tele-sales belonging to union. . . . union caucus, . . . around 10:05. Joint meetings . . . 11:00 p.m., Sheahan . . . tele-sales must be union for contract. Meidar explains different nature of job. Company needs flexibility for their sales people. . . . Morris, must be union—tele-sales. . . . impasse—move to next point. . . . [Sheahan] no, not till tele-sales is resolved. . . . company caucus 11:25, then . . . Joint meeting 11:43. . . .

With respect to this session Wald testified that the Union would not agree to contract language changes; that the Union refused to enter into a "side" letter with Noblit/AMA regarding the successors and assigns clause in the contract; that severance pay was not called for by the labor agreement between AMA and the Union but the Company offered it; that during prestrike negotiations the Union did not (1) ever make any proposal that work be taken away from the telemarketers and returned to the bargaining unit, (2) make any mention of or complain about the installation of toll-free 800-telephone lines, (3) claim that show room employees' work was being done by telemarketers, (4) claim that the work of answering customer inquiries about billing problems was being done by telemarketers (5) complain that the work of taking telephone orders had been taken away from bargaining unit people, and (6) ever specify any work that they claimed was being done by telemarketers; and that a substantial amount of time was spent at the September 3 session discussing telemarketing and most of the time was taken by Meidar explaining why telemarketers could not and should not be in the Union.

Meidar testified, regarding the September 3 session, that he never said the Union's offer was so ridiculous it did not merit a counteroffer and the Company had in fact made a counteroffer; that he insisted on mandatory arbitration; that he insisted that the successors and assigns clause be eliminated or qualified in a "side bar" letter; that during the ses-

sion the Union did not (1) accuse the Company of committing any unfair labor practice, (2) indicate it was going to strike over any unfair labor practice, (3) complain about the loss of work of answering customer inquiries about billing problems, (4) complain about the alleged discontinuance of phone calls to showroom employees, (5) complain about the installation of the toll-free 800-lines, (6) mention WMO work, and (7) did not demand that the work allegedly being done by telemarketers be given back to bargain unit employees; that after the Union demanded that telemarketers be in the unit, the company representatives caucused; that during the caucus, Lentz, Mike Seidelman, Gormley, and Obergfell, at the behest of Meidar, and without discussing the matter further among themselves, took a secret vote on whether telemarketers should be in the Union;⁵⁷ that the vote was a unanimous no; that the company representatives returned to the joint session and said they were at an impasse on that issue and they wanted to move on to another subject: that the Union representatives declined indicating that they wanted to finish discussing the telemarketing question; and that Wald asked the Union for a counteroffer and when he did not receive one the meeting ended.⁵⁸

The following was stipulated at the beginning of the hearing herein (G.C. Exh. 2):

Stipulations

Respondent Noblit-AMA, Charging Party Teamsters Union Local 115 and the General Counsel hereby stipulate and agree to the following:

1. That all of the employees set forth in paragraph 10 of the Amended Third Consolidated Complaint herein with the exception of Dennis Stasen, Mary Sutton and Robert Miller were on Respondent Noblit-AMA's payroll on September 3, 1985, that all of them went out on strike on September 4, 1985, and that none of them have been offered reinstatement by Respondent Noblit-AMA to their former or substantially equivalent positions of employment. Both the General Counsel and Respondent Noblit-AMA reserve the right to litigate the employee status on September 3, 1985 of Dennis Stasen, Mary Sutton and Robert Miller.

2. That Respondent Noblit-AMA has made no written notation in the personnel files of the employees set forth in paragraph 10 of the Amended Third Consolidated Complaint with respect to any alleged picket line

misconduct engaged in by those individuals. Nothing in this Stipulation shall be construed as precluding Noblit-AMA from offering into evidence written evidence of misconduct and/or disciplinary action for picket line misconduct that was not contained in their personnel files.

3. That Respondent Noblit-AMA has no written record of any disciplinary action imposed on any strike replacement employee, supervisor or manager of Respondent Noblit-AMA with respect to any alleged conduct engaged in by those individuals in connection with the strike and picketing of Respondent Noblit-AMA which has been ongoing since September 24, 1985.

It is alleged by John Munro, a supervisor of Boyds who was present at Noblit on the first day of the strike, that on that day Joe Farrell, a striking Noblit employee, said to someone who apparently wanted to enter Noblit "What the fuck you doing? You are not to come in here. I'll kick your ass." Yeoman and Oliver spoke to Farrell, who then left that area.⁵⁹ Farrell testified that he said to the individual in question: "this place is on strike, would you honor our picket line." Also Farrell testified that "Joe Yeoman and Jim Oliver were there and they came down, they said, all right, you can go to the other entrance because all they're—they were going to explain it to the man."

On Friday, September 6, Dennis Seidelman handed out paychecks around noon to strikers on the picket line. They were having a barbeque. It was before they were assigned shifts and so most of the strikers were present.

With respect to September 6, Vladimir Gertner testified that since motor carriers could not serve Noblit/AMA because of the strike, he and two other individuals⁶⁰ used a rented truck to transport merchandise from Noblit to the local terminal of Consolidated Freightways, a regular-route motor common carrier; that they left Noblit at 1 p.m.; that on the way to the terminal the truck was forced to stop when Oliver's car blocked its path on a side street; that Oliver threatened the three men in the truck saying "we are going to kill you; that a number of strikers⁶¹ jumped on the truck's cab beating their fists on the windshield; that after about 15 to 20 minutes Oliver and the strikers left; that the truck proceeded to the terminal;⁶² that when the truck came onto Consolidated Freightways premises Tom Fisher's car followed it and some of the strikers,⁶³ again beat their fists on the truck

⁵⁷ Meidar testified that Wald did not vote because he was not part of management and Meidar abstained because he did not want to influence the vote. Wald testified that he and Meidar did not vote; that the four who voted had previously heard Meidar's comments during the joint session; that the four did not leave the caucus room to discuss the matter before voting; and that the four voted in the same room Meidar and Wald occupied at the time.

⁵⁸ Lentz and Obergfell also testified about this session. Their testimony does not differ in substance from that of Wald and Meidar as summarized above. While Obergfell testified that he did not recall Meidar saying that he wanted to be able to "use" and "abuse" telemarketers, Lentz testified that Sheahan said "abuse them" and then put it in his notes as if Meidar said it. Lentz also testified that telemarketing was talked about by four of the union representatives at this meeting, namely, Shields, Sheahan, Yeoman, and Oliver; and that the Union said "the only defense . . . [to] telemarketers doing union work is to have them in the union."

⁵⁹ On September 10 Munro gave an affidavit to one of Respondent's attorneys, Price, in which Munro refers to the incident but not to what Farrell allegedly said. On September 12 Munro testified in a state court about the incident and apparently about what was said. Munro could not, at that time, however, identify who allegedly made this threat. When he gave an affidavit to a Board agent on September 20 he installed the following change in his September 10 affidavit, which modification was written in by Board Agent David Faye: "Picket Joe Farrell yelled that he would kick his fucking ass if he tried to get in there." The September 10 affidavit was made a part of the September 20 affidavit.

⁶⁰ Humberto Bulgado and Hector Freytas, with the latter driving.

⁶¹ The record indicates that Gertner named them as follows: "Joe Fisher, Joe Farrell and Pat Nefferdorf, Terry Smith and Tom Quinn."

⁶² On the way, according to Gertner's testimony, they flagged down a policeman and told him what occurred. Assertedly the officer told them to move on indicating that he would investigate.

⁶³ Tom Quinn, Terry Smith, Joe Farrell, and Pat Nefferdorf.

windshield, and tried to open the doors; that part of the cargo being transported was found on the pavement; that at Consolidated Freightways terminal Tom Quinn said to the three in the truck: "We will kick your ass"; that as the police arrived the picketers backed off outside Consolidated Freightways property; and that he made a formal complaint to the police but they did not arrest anyone.

Ronald Lenkiewicz, the terminal manager of Consolidated Freightways' Philadelphia terminal, testified with respect to what occurred on September 6 that around midafternoon he heard a truck horn outside his window and Oliver approached him; that he and Oliver left the office and went outside where he, Lenkiewicz, saw Gertner and two other people in a truck cab with a number of people jumping on the truck, banging on its window, and trying to reach into the cab; that he told Oliver to get the pickets off Consolidated Freightways property and when Oliver spoke to them they stopped beating on the truck and dispersed; that he did not recognize any of the people he saw beating on the truck; that the police arrived and had the pickets go from the gate area totally off Consolidated Freightways' property; that the incident occurred about 2:30 or 3 p.m.; and that a carton from the truck was found in the parking lot that day.

Oliver testified that he knew nothing about the above-described side street incident; that he was on the way to the union hall when by coincidence he saw the truck and followed it to the Consolidated Freightways terminal; that there was some picketing at Consolidated Freightways but the pickets did not jump on the cab of Noblit's truck and pound on the windows and threaten the occupants; that he had brought the pickets from Teamsters Local 500; and that earlier that morning he brought four Local 500 pickets over to the picket line.

Each of the strikers identified by Gertner, namely, Tom (not Joe) Fisher, Farrell, Nefferdorf, Terry Smith, and Quinn testified that they did not participate in the events of September 6 as described above by Gertner.⁶⁴ They conceded that they followed trucks leaving Noblits, but they testified that this practice had not yet begun on September 6. Fisher testified that he was at the union hall from 12 noon to 3:30 p.m. on September 6, either the men he allegedly spoke to while at the union hall, Sheahan and Henninger, nor the man who allegedly drove him between the hall and the picket line, Henninger, corroborated this.

Quinn testified that he left the picket line about 2 p.m. to go home to shower and change and then pick up his girlfriend from work at 3:30 at 3rd and Spring Garden for a day trip to Atlantic City. Quinn also testified that while he picketed at Consolidated Freightways twice he did not remember entering onto this motor carrier's terminal property. After viewing pictures taken of him on this carrier's property, he conceded that the first time he went to picket at Consolidated Freightways he did go onto the carrier's property.

⁶⁴ It is noted that Quinn was convicted in Philadelphia of aggravated assault in connection with a labor dispute, and that an administrative law judge in the Board proceeding did not credit his testimony that the assault was provoked. Originally Fisher gave an affidavit, dated March 29, 1986, indicating that he was at the union hall from 10 a.m. until after the plant closed on September 6. This was subsequently changed with Fisher indicating he left for the union hall around noon.

Quinn's girlfriend, Andrea Mihalsky, testified that Quinn picked her up at work at 3:30 p.m. at 3rd and Spring Garden; that Quinn was not wearing clothes he normally wears on the picket line; and that she and the dressed-up Quinn went to Atlantic City when he picked her up from work and returned to Philadelphia later that evening.

Striker Harry Costigan, with respect to September 6, testified that he arrived at the picket line about 5:45 a.m. and remained there until 4 p.m.; that Fisher arrived on the picket line between 7 and 8 a.m. and he left the picket line around noon; that Fisher returned to the picket line between 2:30 and 3 p.m. and he was still there when Costigan left for the day; that Quinn left the picket line about the same time Fisher returned to the line; that Nefferdorf, Terry Smith, and Farrell all arrived at the picket line sometime that morning and he believed it was between 8 and 9 a.m.; and that he did not see Nefferdorf, Terry Smith, or Farrell leave the picket line at any time during the day.

Regina Pflaumer was hired by Noblit on September 6. She testified that she was told the job was permanent by Lentz and Meidar; and that she was not told by Meidar or Lentz that she was replacing striking employees temporarily. She began working at Noblit on September 9.

Another Noblit employee who began working on September 9, William Hirschman, testified that the week before he answered an ad in the *Inquirer*, was interviewed, and was told to report for work on September 9 on West Girard Street, Philadelphia, in front of the police station where he would be picked up by a van and transported to Noblit's facility; and that he did as directed and he was put to work in Noblit's warehouse.

About 6 p.m. on September 11 Meidar left the Noblit/AMA facility to go home. In the car with Meidar were John Munro, who was driving, and a Boyd security guard, Richard Lane. Meidar's car was followed by Yeoman's car which was driven by Alvaro Quinones. Yeoman and others were also in the car. Initially Munro tried to lose Quinones in traffic. Quinones testified that they followed Meidar's car because they saw Munro put a box in the trunk of the car and assertedly they believed that the car was going to be used to make a delivery. It allegedly was their intent to follow Meidar's car to its destination and engage in ambulatory picketing. At one point Meidar's car stopped at or near an intersection with a traffic light. Meidar testified that Munro expressed concern over the fact that he might not be able to act efficiently as a bodyguard if he was behind the wheel. Munro asked Meidar to drive the car. Meidar testified that he believed that this switch occurred when the car stopped at this intersection. (Earlier Meidar testified that the switch occurred later.) A Boyd security van stopped momentarily at the intersection and after Munro talked to the van's driver it left the scene. Quinones' testimony regarding what occurred shifted. At first he testified that Meidar's car cut him off and blocked his way, and that he was afraid to attempt to leave the scene because he was aware of the fact that John Munro carried a gun. Then he testified that Yeoman told him to stay at the intersection. Finally he conceded that he could have made a U-turn from where he had stopped the car in a median area between the southbound and northbound lanes of Delaware Avenue in downtown Philadelphia. (See U. Exh. 32 and R. Exhs. 224, 225, 231 and 233.) Obviously the continuing intent of Quinones and Yeoman was to

follow Meidar's car. For when Meidar's car left the intersection Quinones followed and he continued doing so until the occupants of Meidar's car were able to flag down a policeman who temporarily detained Quinones et al. while Meidar et al. went on their way. Only Meidar and Quinones testified about this incident. Meidar's recall of the specifics of what occurred was admittedly flawed.

Mary Sutton and Dennis Stasen both testified that about 1 week after the strike commenced they began to appear at the picket line at Noblit/AMA. Both worked for Respondent but were not working at the time because of medical problems. Sutton appeared on the picket line on a periodic basis usually 1 day a week until her "legs got a little stronger." Stasen was at the picket line almost every day for the first 2 or 3 months.

The parties stipulated that the following strikers testified on behalf of Teamsters Local 115 at a related injunction proceeding brought by Respondent Noblit/AMA in the Court of Common Pleas, Philadelphia County, Philadelphia, Pennsylvania: Heather Hurvitz on September 12, Thomas Fisher on September 16, and Winifred Wall, Blanche Creighton, and Elaine Childs on September 24.

Nefferdorf testified that he was present at the first injunction hearing before Judge Avellino on September 12; that he recalled being pointed out by Willie Faulk as the individual who Faulk claimed threatened him at the toll booth of the Tacony-Palmyra Bridge; and that he neither encountered Faulk at such a toll booth nor did he ever threaten to kill Faulk. Faulk did not testify herein.

Boyd security guard Anderson Small testified that on September 13 he was driving an escort van following a rented Noblit tractor-trailer driven by Joseph Robinson which was going to Northern Shipping on State Road in Philadelphia; that Boyd security guard Lane was in the van with him; that they were followed by four or five cars of picketers; that the picketers, who had passed the Noblit truck, had set up a picket line blocking the entrance of Northern Shipping; that Robinson appeared to be attempting to drive through the picket line; that one of the pickets hit the van's windshield with a piece of wood; that Robinson ceased his attempt and instead he started "straighten the truck out" to drive up State Road; that at that point a red pickup truck passed the van Small was driving and began to pass the tractor trailer on the driver's side; that there was a collision between the pickup and the tractor trailer; that Robinson drove up State Road, made a U-turn and started to drive back up State Road toward where the van was still stopped; that one of the occupants of the pickup truck got out and jumped up onto a flat-bed truck that was parked in the middle of State Road and as Robinson passed the flatbed the man, using a piece of wood, smashed the passenger side of the windshield of the tractor (R. Exhs. 194 and 195); that the pickets began converging on Robinson's truck and when he, Small, and Lane got out of the van to assist Robinson, Small saw striker Quinones take the van keys and immediately leave the scene;⁶⁵ that when the incident occurred he did not know

Quinones' name; that he subsequently saw Quinones on the picket line and he, Small, pointed him out to John Munro who obtained Quinones' name; that while on the picket line Quinones motioned the tractor trailer on to Small by swinging his right hand back and forth over his head while saying "Where's the keys"; that albeit he learned Quinones' name the day of the above-described incidents, he, Small, could not remember Quinones' name 5 days later when he gave an affidavit; that his affidavit of September 18 does not mention Quinones saying "Where's the keys" and making the aforementioned motion; that while he was pointed out the man on the videotape who took the keys out of the van when he testified in a Philadelphia Common Pleas Court on September 16 about this incident, he did not testify that Quinones later said "Where's the keys" while making the aforementioned motion; that when he gave the affidavit and when he testified in Common Pleas Court he was not asked about what Quinones did or said while on the picket line; and that the Board agent who took the affidavit asked him what happened on September 13 and let him tell what happened.

Quinones testified that his was the last of the approximately four pickets' vehicles to arrive at Northern Shipping on September 13; that when he arrived on the scene the police were already there; that he noticed that the windshield of the truck driven by Robinson was smashed; that Tom Fisher told him to go back to Noblit and get a union official to come to Northern Shipping; that he did not get out of his car and take the keys from the Boyd security van; that Yeoman was at the Noblit picket line and he returned with Quinones, both in Yeoman's car to Northern Shipping; that when he returned to Northern Shipping he did get out of Yeoman's car; that he was not accused or questioned about taking the keys while he was at Northern Shipping; that he knew nothing about it until the following day when he went to the picket line and he was told that he was being accused of taking the keys; and that he never made the above-described motion while saying "Where's the keys."

Fisher testified that he was present at the September 13 incident at Northern Shipping; that Robinson who operated the tractor trailer "tried to run Joe McGuckan's truck [the aforementioned red pickup] off the road and Joe went into the telephone pole right there"; that Robinson made a U-turn; that he did not see anyone smash the windows on Robinson's truck; that when Quinones drove up he, Fisher,

went down to Quinones' car before he ever got out and told him to go back to the picket line and he could bring one of the business agents up so we could just talk to him and discuss what happened at Northern Shipping;

that Quinones never got out of his car; that when he testified about the incident in the Common Pleas Court in Philadelphia on September 16 he did not mention the telephone pole; that he did not see McGuckan throw a stick at a windshield; that on September 16 he did testify in Common Pleas Court that "the way it looked" McGuckan threw the stick at the truck driven by Robinson for his, McGuckan's, own safety; that after the above-described testimony was brought to Fisher's attention by Respondent's attorney, he, Fisher, saw McGuckan throw a stick at the windshield of the truck driven by Robinson; that in an affidavit dated March 13, 1986, he stated, "Quinones walked over to me and I told him what

⁶⁵ The man who smashed Robinson's windshield was arrested by police officers who witnessed the occurrence. Small was interviewed by the police regarding the incident. He could not recall, however, whether he told the police about an individual taking the keys out of the van.

happened. He got right back into his car and left"; that notwithstanding what he stated and read in the affidavit it is his testimony herein that Quinones never got out of his car; and that Quinones' car was 15 to 20 yards from the Boyd van.

Striker Terry Smith testified that he was present at Northern Shipping on September 13; that as Robinson "inched" the tractor-trailer forward in his attempt to go through the picket line he hit McGuckan's red pickup truck; that he did not see any of the pickets smash any of the windows on the truck operated by Robinson; that when Quinones arrived on the scene he stayed in his car and Tom Fisher walked over to Quinones; that he did not see any of the pickets take keys from the Boyd Security van; that he did not assault Robinson that day; that Robinson filed a private criminal complaint against him but Robinson never followed through on the complaint; that McGuckan drove his pickup truck in front of Robinson's truck; that Robinson's truck ran over the front of the pickup and the pickup went into a pole; that the affidavit he gave to the Board on February 19, 1986, does not indicate that the pickup went into a pole; that when it was hit the pickup truck was parked in the entrance; that Robinson's truck "went over the top" of McGuckan's truck; that damage to the pickup truck involved its left front fender, the bumper was "mangled," and the "hood was pretty mangled up to"; and that when Quinones stopped his car it was a car length away from the Boyd van.

After Respondent's attorney showed Terry Smith a photograph of McGuckan's pickup truck (R. Exh. 216),⁶⁶ Smith testified that the only damage visible in the photograph was to the right side of the front bumper; and that he "imagined" that the right side of the truck struck the telephone pole.

On the morning of September 19 a Boyd van transporting employees from the pickup point twice unsuccessfully attempted to cross the picket line. Estienne Santiago, a Boyd assistant director, special services testified as follows about what then occurred:

After he [the van driver] pulled out—a while later—you know—I was observing the picketers, at which time I heard one of the picketers yell, "Hey, let's get them."

And, they started getting all riled up, and so forth, at which one point the guy yelled again, "Hey, let's go get them." And they ran inside the property, stormed the property, which they ran towards the doors, which we had ordered locked, but they started banging and kicking in the doors and Civil Affairs had to get in between them and the doors, and so forth.

They also charged one of our vans that was parked on the side of—security personnel. They started to rock the van, and hitting the windows and so forth.

...
[W]e had a video man on the roof at the time they started storming the—or charging the property.

They started throwing rocks—

...
As they were stoning him, he radioed me to tell me that they were stoning him, which I had already ob-

served, and I told him to stay up there and get as much film as he could, which wasn't much being that he was being stoned—and being, you know, they were throwing things at him, and he had to finally come down for his safety.

We had to pull him off the roof.

Santiago also testified that later that morning the picketers would not allow him, two other Boyd employees, and Lentz to cross the picket line as they tried to leave Noblit's premises.⁶⁷

Boyd guard Small, while driving a Boyd van on September 19, was first chased on Interstate Highway 95 by two vehicles with the passenger in one, George Rosario, hitting the van with a baseball bat breaking the side rearview mirror, shattering the windshield and denting the van. On his way back to Noblit Small was again chased by "another car with pickets" but this chase did not last as long as the first and there is no assertion that the occupants of this car damaged the van.

William O'Farrell Jr. on September 20 spoke to Obergfell at the Girard Avenue pickup point about getting a job with Noblit/AMA. Obergfell told him to report Monday, September 23, at the pickup spot and he would be given an application and he could start work. O'Farrell Jr. did not give his real name when he applied for the job because he is the son of the president of another Philadelphia Teamsters local and because he wanted to be hired so that he could keep the Union apprised of what was occurring inside the plant.⁶⁸ He hired on as John Lewis and his contacts at the Union were Sheahan and Henninger.

Small testified that on September 20 he drove a Boyd van which accompanied a rented tractor-trailer used by Noblit to Consolidated Freightways; that they were followed from Noblit by a few carloads of pickets; that when they arrived at Consolidated Freightways doors a Noblit employee, Victor Ramos, got out of the van to help unload the trailer; that 5 minutes later Ramos jumped back in the van, which was parked next to the trailer; that Ramos had a black and blue mark between his shoulder and neck and his right hand was bleeding; that when Ramos jumped in the van he said "he was attacked by people inside, to just get out of there"; that as he pulled out he saw three men coming at the van, with one holding a long black object in his hand; and that as he pulled out of the Consolidated Freightways terminal one of

⁶⁷ It is alleged that the day before, September 18, two men started a physical confrontation with three individuals from Overnite Transportation (Overnite) over whether one of that company's trucks struck a female picketer while attempting to cross the picket line. Two of the individuals from Overnite were supervisors. Both testified herein, with one alleging that one of the union representatives had an open knife in his possession and it scraped the truckdriver's stomach. This witness was not sure of the identity of the two men but it was stipulated that during the injunction proceeding in the Philadelphia Court of Common Pleas in September 1985, he identified Yeoman and Oliver, who were in the courtroom, as his assailants. Overnite's truckdriver did not testify herein. Neither did Yeoman. And albeit Oliver testified, he was not asked to refute these allegations. The female picketer, Wall, testified that she suffered a scrape on her leg in the incident.

⁶⁸ O'Farrell Jr. left a job paying \$10.21 an hour to work at Noblit/AMA. His pay at Respondent was \$6 an hour. He testified that it was his intent to stay at Noblit/AMA until the labor problem was settled.

⁶⁶ The photograph was taken of the right side of the truck and, as here pertinent, it also shows most of the hood.

the pickets threw a bottle and shattered the whole windshield.

Tom Fisher testified that "[w]hen the trucks went out [from Noblit], I didn't remember the exact dates but when the trucks went out, I followed them for ambulatory picketing"; and that while he picketed outside Consolidated Freightways he never went inside that carrier's property.

Replacement employee Regina Pflaumer testified that on September 20 she was in a Boyd van which crossed the picket line on the way to the dropoff point at the end of the workday; that Santiago was driving the van; that a man put his fist through one of the side windows in the van⁶⁹ and she got glass in her eye; and that later that evening she had to go to a hospital to have the injury treated.

Striker Blanche Creighton testified that on September 20 she and Elaine Childs were standing in the small driveway at the end of the working day at Noblit/AMA when Varela entered the premises; that she and Childs had to jump out of Varela's way; that he was driving so fast he left skid marks on the pavement; that she saw Varela laughing when she and Childs jumped out of the way; that Varela loaded other replacement employees in the van and then drove out the big entrance; that Varela then drove at she and Childs and when she jumped out of the way the contents of a cup she was holding spilled; that she did not intentionally throw the contents of the cup at the van; that Childs said "I'm hurt" and she was limping; that later that evening Varela told her "if you go to court and testify against me I'll come get you"; and that she was "standing out on Richmond Street as the van approached."⁷⁰

On arriving at the dropoff point on the evening of September 20 Regina Pflaumer and her mother, Dorothy Pflaumer, went to the latter's car. Regina testified that as they were getting into the car Carol Anderson drove by in a car driven by someone else and Anderson said "sorry Dot, I know what your car looks like"⁷¹ and then said to Regina Pflaumer "I'll get you you little flithy [sic] bitch scab."

⁶⁹Santiago corroborated this testifying also that when he drove back into Noblit another window was smashed. Santiago reported both incidents to Civil Affairs. Another Boyd guard, Jesus Varela, testified that this same evening a picketer, Pete Stacey, threw a rock which broke one of the van's windows and hit George Genoa, a replacement employee of Noblit.

⁷⁰Earlier Creighton testified that she and Childs were still standing at the small entrance and both of them were leaning against a car; that a second van was just behind Varela and it almost collided with Varela's van; and that she ran into the middle of Richmond Street to evade Varela and then the second van almost hit her and Childs. It appears, therefore, that Creighton was not standing "out on Richmond Street" as the first van approached but rather this is where she ended up while, according to her testimony, evading the first van. Griffiths testified that she was in the van which almost hit Creighton; that Creighton ran in front of the van; that Creighton looked like she was in shock; that Creighton threw ice at the van windshield; that the driver swerved to avoid hitting Creighton and the impact of the ice; that Creighton ran across in front of the van and ended up on the driver's side; that Creighton's face showed that she was startled; that the ice was thrown when Creighton was in front of the van; that the ice was slushy, crushed ice—not cubes; and that if Creighton had not continued to run she would have been struck by the van.

⁷¹Dorothy Pflaumer corroborated this testifying that Anderson passed by "in the car with another driver."

Anderson testified that on one occasion she saw Dorothy and Regina Pflaumer getting into their car near the police station; that she "had another passenger with [her]"; that she was in the area to pay a bill at Paul's Appliance which is a few doors away from the police station on Girard Avenue (U. Exh. 35); that she just said "Hi Dot" and kept going; that everyone would know what Dorothy Pflaumer's car looked like since it was parked in Noblit/AMA's parking lot long before the strike began; that she did not subsequently damage Dorothy Pflaumer's car; and that striker Sue Floyd was with her when she saw the Pflaumers.

Floyd testified that she is "always in Carol's car; and that she was never in a vehicle with Carol Anderson when either said to Dorothy Pflaumer 'I know what your car looks like' or made any threatening comments or statements to Regina or Dorothy Pflaumer. Floyd did not specifically testify that she was in a vehicle with Anderson on September 20 and Anderson only said 'Hi Dot' as they passed the Pflaumers near the police station.

Regina Pflaumer testified that about two evenings later when she and her mother returned to the mother's car to go home they discovered that the paint on the car "was eaten away." They never found out who damaged the vehicle.⁷²

O'Farrell began at Noblit/AMA on September 23. In filling out the application (R. Exh. 36) for employment that morning he lied regarding his name, address, social security number, and past employment. O'Farrell asked Obergfell if his, O'Farrell's, job was secure and assertedly Obergfell said that he "would like to say it was, but at that time he couldn't say."

Replacement employee Hirschman testified that when he first started at Noblit he believed that the job was temporary. On September 23 all the warehousemen (about 30 to 40 people) "all of the temporary people," assembled in the front office at Noblit and Meidar told them "that the people that were out there were to stay out there, and were not coming back, and we were here to stay permanently."⁷³

On September 25, Obergfell told Hirschman that he was being promoted and would receive a raise.

Pickets showed up in front of the police station on Girard Avenue on September 25, and there was a confrontation between them and the Boyd personnel while the latter were attempting to pick up replacement workers to transport them in vans to Noblit/AMA. Five individuals testified about the confrontation with the last, Harry Hawkins, sponsoring a videotape film (G.C. Exh. 100), he took during the incident. John Munro, a director of special services with Boyd, was the first to testify regarding the confrontation. He testified that he had a verbal confrontation with Yeoman; that his brother, Dennis Munro, had a verbal confrontation with Joe Farrell; that a fight broke out and Pat Nefferdorf grabbed him by the tie and tried to pull him down; that Nefferdorf went down; that a book and a \$26,000 check from Noblit for

⁷²Dorothy Pflaumer corroborated this testifying that the car was damaged a week or two later; that it had to be repainted; and that she told Lentz the day after the car was damaged about the damage and Anderson's statement.

⁷³O'Farrell corroborated this testifying additionally that Meidar said if the replacement employees stuck with him he would stick with them. O'Farrell testified that this occurred on Wednesday, September 25, while Hirschman was not sure if it occurred on September 22 (a Sunday) or September 23.

security services fell from his pocket;⁷⁴ that Nefferdorf kept him from retrieving the book and tried to pull him down, that he then kicked Nefferdorf “once or twice, or I don’t know how many times I kicked him on the sides”; that Juanita Lupton punched him in the face when he was kicking Nefferdorf; that he has never seen the check or book since; that actually Nefferdorf grabbed the book when it fell to the pavement; that the Civil Affairs officers restored order; that when the Civil Affairs officer told Nefferdorf to empty his pockets “on a mailbox” the book was gone; that he was not taken anywhere by the police but he was asked to go to East Detective District to file a complaint against Nefferdorf; that Nefferdorf was arrested that day for taking the book; that when the confrontation was broken up he told Civil Affairs “He’s [Nefferdorf] got my book”; that while the videotape film doesn’t show that, it doesn’t show the whole conversation; that he has a black belt in karate and he fights in karate competitions; that before any punches were thrown, he pushed Joe Farrell after Farrell kneed his brother Dennis Munro; that when Farrell cocked his fist he told his guards to let guard Lane go so he could protect himself; that he was nowhere near Yeoman during the altercation; that he did not touch Yeoman; that he did not know who Boyd guard Manny Bridges was referring to when he said “That guy had brain surgery”; that the videotape film shows him immediately after the confrontation feeling his pockets for the book; and that the Commonwealth of Pennsylvania withdrew prosecution of Nefferdorf.⁷⁵

Lupton testified that when the above-described altercation broke out on September 25 she was standing by the curb and not by John Munro; that she was knocked down when Lane went after Farrell; that because of her weight, 380 pounds, she needed help to get up; and that she did not strike John Munro or see Farrell knee or strike Dennis Munro, or see Nefferdorf take a book or a check from John Munro, or see the pickets spit at replacements.

Regarding September 25, Farrell testified that he did not knee Dennis Munro; that he did not approach Lane, clench his fist, or walk toward Lane; that Lane attacked him; that Dennis Munro bumped him with his stomach and John Munro pushed him; that in 1981 he had a major brain tumor removed; that his jaw was injured in the altercation; and that he was not arrested on September 25.

Nefferdorf, with respect to September 25, testified that John Munro hit him without provocation; that he was pulled down and held down by a Boyd guard; that John Munro kicked him 10 to 12 times while he, Nefferdorf, was being held down; that he was able to grab John Munro’s leg and pull him down but Munro was able to get back up and continue to kick Nefferdorf who was still being held down; that at that point the police broke it up; that he did not grab John Munro’s tie; that he neither took a book or a check from John Munro nor did he see either of these items on the ground that day; that 2 to 3 minutes after the fight was broken up a Civil Affairs officer told him that John Munro said that he, Nefferdorf, took the book; that he denied this and

told the officer he could search him; and that the officer declined.

Hawkins in testifying about September 25, testified that he remembers shutting the camera off just one time, namely, when John Munro kicked Yeoman in the back and a dog was “chewing up [Yeoman’s] hand” and he, Hawkins, went to Yeoman’s assistance.

Lentz gave the following testimony about a conversation which allegedly occurred at 1:40 p.m. of September 25:

I was standing out in . . . [Noblit/AMA’s] yard, Jimmy Oliver walked not up to me but he was on the sidewalk so that he was perpendicular to me and said I have a message for you faggot boss. I said I don’t have a faggot boss. He said tell your faggot boss that what happened now is between him and me. This is no longer a strike matter. He’s going to have to settle this with me.

At the end of the working day on September 25, Obergfell was the first to get out of a Boyd van at the dropoff point at the Girard Avenue police station. Regarding what happened at that point, Obergfell testified that Carol Anderson called him a motherfucker and a scab and spit in his face; that he saw Anderson spit at Gormley also but he did not know if she hit him; and that he told Lentz about the incident.

Dennis Seidelman testified that on the same evening Anderson and a group of people followed him, Karen Stojak, and Lisa Baines from the above-described dropoff point to his car, which was parked in that neighborhood; that Anderson called Stojak a “motherfucker,” shook her fist at Stojak, and spit on Karen several times; that Anderson told someone to get his license plate number saying “we will get him he won’t come up here anymore”; and that he believed that he told Meidar and Lentz about the incident the next day.⁷⁶

Stojak testified, regarding this incident, that for four blocks Anderson held up her fists and shook them and did nothing but taunt her, attempt to provoke her, and repeatedly spit on her face and neck.⁷⁷

Anderson denies all these allegations conceding only that she was there on September 25 and that she called them scabs. She would not, however, call any of her accusers a liar. According to her testimony police were present throughout and they never said anything to her about her behavior. And she testified that she could not recall if she used obscenities on the picket line.

In the evening of September 25, Noblit/AMA and the Union entered into the following consent decree:⁷⁸

⁷⁶ Seidelman testified that Rosa Santos also followed them, several paces behind Anderson; and that Santos was also “hollering.” He did not specify what Santos “hollered.”

⁷⁷ Stojak also testified that the crowd which followed them numbered between 20 and 30 people; and that Santos “wasn’t doing anything. She was just leading the crowd along, sort of going with the tone of the event.”

⁷⁸ It was stipulated that present at that proceeding were Yeoman, Brainard, Wald, and Price.

⁷⁴ The check covered services for 1 week.

⁷⁵ *Commonwealth of Pennsylvania v. Patrick Nefferdorf*, MC 85092557, dated January 22, 1986. The charges of simple assault, theft, and receiving stolen property were withdrawn by the prosecution.

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

TRIAL DIVISION—CIVIL BRANCH

NOBLIT BROTHERS September Term, 1985
AND COMPANY, et
al.

v.

TEAMSTERS LOCAL Civil Action No. 3557 in
UNION NO. 115, et al. Equity

CONSENT DECREE

AND NOW, this 25th day of September, 1985, pursuant to the agreement of the parties, it is hereby ORDERED as follows:

1. Defendants and any other persons acting on behalf of or in concert with them are enjoined from preventing or attempting to prevent, by obstruction or blockage, any person or persons or vehicle or vehicles from freely entering or leaving the property of the plaintiffs, A.M.A. Manufacturing Corporation and Noblit Brothers & Company at Richmond and Norris Streets, Philadelphia, Pennsylvania; provided, however: that defendants may temporarily delay the entry of any vehicle (other than one driven by or transporting any of plaintiffs' employees) into plaintiffs' premises for a period not exceeding fifteen minutes; provided further, that the prevailing practice during the strike on the picket line with respect to vehicles driven by or transporting plaintiffs' employees shall continue.

2. Plaintiffs, defendants, or persons acting on their behalf or in concert with them, and all employees of Boyd Security Services are hereby enjoined from committing any acts of violence.

3. Defendants and persons acting on their behalf are enjoined from trespassing or entering onto plaintiffs' property.

4. Nothing in this decree prohibits plaintiffs from urging employees, customers and others to cross the picket line.

5. Jurisdiction shall be retained by the Court for the purpose of ensuring compliance with this decree.

6. This consent decree is conditioned upon plaintiffs' discontinuing the use of Boyd Security Services not later than October 5, 1985.

7. This injunction shall, if necessary, be enforced by the Sheriff of Philadelphia County and by any other law enforcement agency, including the Philadelphia Police Department.

Noblit/AMA's attorney, Wald, went to the pickup point at the Girard Avenue police station on the morning of September 26 and testified as follows about what occurred:

I got there around 6:15 am. I went to the precinct house, and introduced myself to the captain. He didn't seem to be very interested in who I was. I went outside and I observed that opposite the precinct house on the corner were about forty . . . men . . . and as the morning progressed this number increased probably to

about 200 people, and I saw a great many things that morning. At one point, this was the pick-up point for the replacement workers, where they would be picked up by a van supplied by the employer. And, at one point, I heard across the street, one of the people in the crowd yell, there come some of them, and a group of men started running in the direction in which that person was pointing. I saw the van come back and it was surrounded by members of the mob, including several officers of the teamsters 115 union and the civil affairs unit, the so called labor squad tried to extricate the van, and I guess they were able to do so, but the van was never able to make the pick up. There also came several large tractor-trailers, and they positioned themselves so as to block the road, and there was Zuckerman, I believe, on the name of most or all of them, and the civil affairs unit tried to prevent this, however, at one point, a police car was stationed to prevent, to block the flow of traffic went on Girard Avenue, so that there was some success in blocking the street. I saw one man get on the rear of a trailer, working on the, I guess what you would call the undercarriage of the machinery, under the trailer, and civil affairs people grabbed some of the drivers, who jumped out, leaving their vehicles, and pushed them back in. Eventually [they] broke the blockade. There was an assault on the police line. There must have been around, at one time, maybe 60-80 police, counting uniformed policemen and civil affairs people, and at one point

. . . .

. . . .

[t]he mob led by John Morris started running toward the police line, and stopped when they got within a few feet of Captain Shanahan, who was in front of the police line or in its sort of apex or middle. Then Mr. Morris started shouting at Captain Shanahan that he shouldn't be defending the replacements. That they were all from out of town, and scabs, and what not. They didn't pay city wage tax. He pointed to me and said that I didn't pay and city wage tax, and he started, subsequently he started berating someone who I later learned to be Dennis Seidleman, saying that, referring to him as a brother of the owner. . . .

. . . .

I . . . learned that two of my negotiators had been beat up. Captain Shanahan came to me, and said that, well he indicated that he either couldn't or wouldn't get the replacements into work or take steps to allow the employer to do so. And, he asked me he said, if you will agree to shut the plant for the day, and not take these people into work, I can get the agreement from 115 to disperse the crowd, and I refused to enter into that agreement. And, I said I didn't have authority and I wouldn't do it. And, he asked me if I could reach Mr. Meidar, which I eventually did. He told me I could not use the phone in the precinct house, because that would be a breach of the police force neutrality, and that I would have to use the public phone on the sidewalk. I eventually reached Mr. Meidar and explained that he

had a choice between these people staying there, maybe eight hours, ten hours, who knows how long, indefinitely, or agreeing to Captain Shanahan's terms. And, Mr. Meidar agreed to Captain Shanahan's terms. Then sometime later, the crowd began to disperse, and some of the replacements drifted off, others. There was an attempt by union officials to get some of the replacements to sign union cards, which some of them did.

Wald testified that he did not know the names of the replacement employees and he did not report back to Noblit/AMA management any names of individuals who signed cards. Others testified about the September 26 demonstration, namely, Varela, O'Farrell Jr., Hirschman, Dennis Seidelman, John Munro, Griffiths, and Hawkins. Their testimony, however, does not substantively add to or detract from the testimony of Wald, as set forth above. Consequently, it will not be treated herein although it has been considered. Similarly that portion of the videotape (G.C. Exh. 100) dealing with the September 26 demonstration albeit not specifically treated herein, has been considered.

Three serious incidents are alleged to have occurred during this demonstration. Allegedly some of Respondent's managers, two of whom were on the bargaining agreement negotiating committee, were, as Wald testified, beaten up. Three of Respondent's supervisors testified about the incident, which occurred just after 7 a.m. Gormley testified as follows:

The Company and its security service arranged for a pickup point at Girard and Montgomery Avenues in front of the police station, and there employees or workers were vanned or bussed across the picket line to the company property.

I live in New Jersey and I commuted to Philadelphia with several others.

On the morning of September 26, 1985, I commuted in a private vehicle driven by Bill Obergfell. I was a passenger in the front seat. There were two other employees, Bill Zimmerman and Jeff Ryan in the back seat.

As had been the practice, we parked on a side street in the neighborhood a half mile or more from the pickup point. We were walking to the pickup point; we were proceeding south on Montgomery Avenue towards Girard Avenue when I noticed 6-8 men standing on the corner whom I knew immediately to be union activists.

I said to my companions. "There they are. There is nothing we can do but continue walking normally," which we did.

Then these men spotted us, I heard them yelling my name, "There's Gormley. Don't let Gormley get by. Get Gormley."

I continued to walk. They and—they moved more swiftly, and then I stopped and they continued, and when they got within striking distance one of the young men hauled off a real haymaker, struck me on the face, under the left eye.

I did not know what to do. I knew I was hurt because there was a lot of heat rushed to that facial area, and I felt blood trickling down my face.

I didn't know whether to fight back, or to continue to stand, or whether to fall down and perhaps satisfy

them, and it would not continue further, so I decided to go down. I went down on my right side to protect my only kidney.

While on the ground, someone kicked me. There was a lot of commotion. I heard them yell. "Let's get him!"

...

Then, I don't know how long I was on the ground, I suppose a minute or two minutes, I got up, I looked back, and Bill Obergfell was lying on the ground, partly on the sidewalk, partly in the street.

I walked back, some people were trying to attempt to take care of him, so then anger was mounting in me, and I started to run around the corner trying to find my attackers, and when I got around Girard Avenue, there was bedlam and chaos.

The street was milling with literally hundreds of people. The replacement workers were huddled against the police station wall. Several looked at me and saw my bleeding face and they gasped, and I knew that I wasn't doing any good there, so I decided to go back around onto Montgomery Avenue, which I did.

Bill Obergfell was still [sic] lying on the ground. We tried to assist him to his feet, but he wanted to get to his feet on his own power, which he finally did.

...

And then then [sic] the police, a uniformed policeman took Bill and myself to St. Mary's Hospital accident ward . . . and,

...

At the hospital I was given a tetanus shot, extensive facial x-ray, and then the surgeon came to the operating room—to the accident ward, and said, "you have a very nasty gash there. If I don't stitch it you will have a bad scar."

I said, "Well, go ahead,"

Six stitches were put in my face, and I guess then we left the hospital, and were taken to the East Detective Division at Front and Westmoreland, where we gave statements. We spent about 2 hours at this police station, and then the policemen took us to where our car was parked, and we returned to our homes.

Obergfell testified that about 10 of the demonstrators yelled "There's Gormley" and "Don't let him by us." Obergfell saw Gormley get hit in the face. He, Obergfell, testified that someone he did not know started throwing punches at him; that initially he was able to avoid getting hit but when Tom Fisher also threw a punch at him he was distracted and knocked down by the individual he did not know; that he believes that as he was going down the punch thrown by Tom Fisher hit him in the back; that four to six people "worked . . . [him] over"; that the inside of his eye was scratched very severely and it was about 10 days before he could read with that eye.⁷⁹ Zimmerman testified as follows about the incident:

⁷⁹ Noblit replacement employee Aaron Lee Warren testified that on September 26 he saw the strikers chase someone up the street and start beating and kicking that someone; and that he later found out that it was Obergfell.

Well on the morning we were going to work Andy Gormley, Bill Obergfell, Jeff Ryan and myself. When we were headed towards Girard Avenue on Montgomery, when approximately four or five people yelled out "there's Andy Gormley."

Upon hearing that, about 10 or 15 people came charging around the corner. Bill Obergfell moved forward apparently ahead of the other three of us to say something and he was immediately attacked by about six or seven people.

Another two or three came up to Andy Gormley and myself and one of them struck Andy Gormley in the face and knocked him to the ground. I turned to get away and I was kicked the back of the leg. At that point I turned and took a bottle of tear gas which I had in my pocket and shot it at the pack of.

Photographs of the injuries suffered by Gormley, Obergfell, and Zimmerman (R. Exhs. 179, 183, and 211, respectively) were received. Tom Fisher gave the following testimony about the incident:

Bill Obergfell, Andy Gormley, Bill Zimmerman and another gentleman. I don't know his name.

...
were coming up the street, we had our picket signs on and we were just yelling, you are scabs, you are crossing our picket lines, taking our jobs.

And as I said that, Bill Obergfell pushed me and told me to get out of his way. So as he pushed me, I grabbed him in self defense and at the time that I was holding onto him, Bill Zimmerman sprayed mace on me, in my eyes.

...
After the mace, I just couldn't see right and I believe someone yelled that the cops were coming. And then everything broke up. As far as later on, I proceeded back to Girard Avenue with the rest of the demonstrators.

Also, Fisher testified that he did not attempt to hit Obergfell or Gormley; that he did not hear anybody say "there's Gormley. Don't let Gormley by"; that no criminal charges were brought against him; that he did not kick Zimmerman; that there were six or seven people in the involved group of demonstrators and he was the only Noblit employee; that he held Obergfell for 1 minute and did not see or feel Obergfell being hit; that after holding Obergfell for 1 minute he was sprayed by Zimmerman and he, Fisher, could not see for the next 2 minutes; and that when he regained his sight he did not see Obergfell or Gormley.

Noblit Supervisor Leonard Covey testified that on September 26 he drove to the pickup point with Peter Hulyeau; that one block from the Girard Avenue police station they noticed six replacement employees standing on the corner and he talked to the employees; that a crowd of 30 to 40 people which was about 350 feet away started to come towards him and when the crowd had advanced about 50 feet someone in the crowd yelled "there they are"; that he and Hulyeau made a U-turn on Girard Avenue and left; that Melvin Sharp, a striking Noblit employee who worked for him, was in the crowd and he had a 3-foot long stick in his hand;

that he believed he told Meidar about the incident the next day; and that when the crowd moved on them it was also moving in the direction of the strike replacements.

Warren testified that regarding September 26 that he spoke with Covey and Hulyeau at the pickup point; that he was standing with three other named individuals; that about 10 to 15 pickets chased them; that they turned and ran and he didn't see what happened to Covey and Hulyeau; that some of the unidentified pickets attempted to punch him and another Noblit replacement employee, Matthew Williams; and that he did not report this incident to management at Noblit/AMA.

With respect to the above-described allegations, Sharp testified that he did not see Covey or Hulyeau that morning; that he neither saw a group of pickets chase either of these two men that morning nor did he chase them; that he was not carrying a stick or anything else at the demonstration; and that the allegation about carrying a 3-foot stick must be considered in the light of the fact that there were "all of these police out . . . [there]."

Collectively replacement employees O'Farrell (Lewis Jr.) and Hirschman testified that after signing the union authorization cards and after the above-described demonstration broke up they went to the picket line; that they were the only two replacement employees to go to the picket line; that they stayed at the picket line between 20 and 30 minutes; and that Boyd security personnel pointed at them when they were at the picket line.⁸⁰

Hirschman testified that later that day he telephoned Noblit/AMA to ascertain the location of the new pickup point; that he spoke to Zimmerman, who earlier that day had seen him sign an authorization card;⁸¹ that Zimmerman told him he, Zimmerman, would get back to him; and that Zimmerman never called back.

Oliver was on the picket line at Noblit/AMA on the morning of September 26. He gave the following testimony regarding an incident which allegedly occurred that morning:

A. Mr. Meidar was riding in the back of I think it was a black or dark grey Lincoln Town Car, it was around—excuse me, it was around 9:00 in the morning. He was pulling out, he was sitting in the back seat, John Munro [sic] was driving and another security was riding in the front seat. Moshe Meidar was sitting directly behind the passenger on the passenger's side in the back seat. As he approached the picket line, I pushed through, the car stopped . . . across the picket line.

...
[s]o the pickets had to step . . . back.

...
I walked over to the car and I asked Mr. Meidar, I said why do you have the security beat up on Joe Yoeman [sic] and Joe Yoeman is the President of the Local 115, business agent. He pointed at me and he

⁸⁰ While O'Farrell testified that they arrived at the picket line between 8:30 and 9 a.m. Hirschman placed their arrival about 10:30 a.m. The latter was pretty sure he saw John Munro at Noblit while he, Hirschman, was at the picket line.

⁸¹ Zimmerman testified that he did not see any replacement employee sign an authorization card and that he did not know John Lewis or Hirschman.

said you next. I said what do you mean, I am next. He said, you next, you are going to get the same thing that Joe Yeoman got. And I said well, if I am going to get the same thing Joe Yeoman got, you can get me right down here every morning, you can get me down here, if you think you can get me. He said you are going to get the same thing. And I said come on, here I am, if you want to get me, get me now. He said, you are going to get the same thing Joe Yeoman got. And then the pickets also asked him, what do you mean, are you threatening him? And he said they fired, they are all fired, they are not coming back to work, I have already hired new employees.

Regarding this alleged incident, Oliver further testified that when Meidar said “they” were all fired he pointed at the pickets; that Quinn, Tom Lafferty, someone whose first name was Sukie, Hurvitz, and Rafferty were there; that he was next to Meidar’s car window and about 6 inches from Meidar; and that the window was open part way. On cross-examination Oliver testified that his October 7 affidavit to the Board erroneously indicates that Meidar’s window was only down one-fourth of an inch and it should read 2-1/4 inches; that his October 7 affidavit to the Board does not specifically indicate that Hurvitz and Rafferty were there but the affidavit, after naming individuals, refers to “others”; and that he did not threaten to kill Meidar. Regarding September 26, Hurvitz testified that early in the morning on September 26 she saw Meidar in a car driven by John Munro; that there was also a uniformed Boyd guard in the car but she did not recall who he was; that Meidar was in the back seat on the passenger side, John Munro was driving the car, and the other security guard was on the front seat, passenger side; that the following transpired when Meidar’s car stopped:

Jimmy Oliver asked Mo Meidar if he liked what happened to Joe Yeoman the day before, and Mo Meidar said yes, he did, and he pointed at Jimmy Oliver and he said that he was next, and Jimmy Oliver said what, and then Mo Meidar said you are next, and Jimmy said, what the same thing that happened to Joe Yeoman—the same thing that happened to Joe Yeoman. And Mo Meidar said, you know, you are next, and Jimmy said I am here everyday, if you want me, you know where to find me.

And then one of the other pickets asked Mo Meidar, you know, who was next, you know, what is going to happen next, and he said that is it, everybody is through, you know, you are all fired, you know, everybody has been replaced.

When he said everybody was through

He pointed at a lot of pickets that were standing around [;]

that she was with Rafferty when it happened; that part of the car was over the picket line; that the car was completely free to leave but she did not recall if anyone was picketing in front of the car; that the passenger front window was open about 2 inches and she did not know if the rear one was open; that she knows Boyd security guard Varela from the

picket line; that an affidavit she gave to the Board on October 3 does not mention this incident; that the October 3 affidavit states that she was an employee of Noblit; and that on October 3 she considered herself to be an employee of Noblit.

Rafferty, with respect to the alleged incident, testified that normally she was on the picket line from 10 a.m. to 2 p.m. but sometimes she got there earlier or left later; that between 10 a.m. and noon on September 26 she saw Meidar in a car being driven by John Munro leave the Noblit/AMA facility; that there was a Boyd guard in the front seat but she was not sure who he was; that Meidar sat in the back behind the unidentified guard; that she was on the passenger side of the car; that she heard the following:

I heard Mr. Oliver mention, he said something to the effect of, are you proud of what your goons did to Joe Yeoman, and he [Meidar] said—he said, yes, and you are next, and he [Meidar] pointed right at him [Oliver] very deliberately, that is why I remember that, and at that point he said something, what do you mean, because I am next, and he said, yes, you are next.

And that was all that Mr. Oliver had to say to him. There was other conversation also.

Then Tommy Quinn, Thomas Quinn, he had said something like to Mr. Meidar, well are we all going to get hurt, and he goes—

and Mr. Meidar then pointed and said—he started pointing randomly to different people and he said all of you people will never walk through these doors again, you are fired, been replaced. As he was pointing, he was very deliberately accenting each . . . [word] with a point.

that she was standing with Hurvitz when it happened; that getting fired made an impression on her; that, that when she gave an affidavit to the Board on September 30 regarding the sexual harassment that she received from the Boyd guards,⁸² she did not mention the above-described verbal exchange; that in her affidavit she indicated that she was employed by Noblit because she did not think she was justifiably fired; that she knows Varela and would recognize him immediately if she saw him; that she cannot identify the Boyd guard in the car; and that while the guard was very close to her she was looking at and listening to Meidar.

The testimony of two of the occupants of the car (all involved agree that Munro was in the car with Meidar), differs dramatically from the testimony described above. Munro testified that about 8:30 a.m. he left Noblit in a car with Meidar; that the vehicle was driven by Varela and he, Munro, was on the passenger seat in the front;⁸³ that Meidar

⁸² Rafferty testified that at various times Boyd guards Bridges, Lane, John Munro, and Varela asked her to perform oral sex and when her husband confronted Bridges the latter said that his penis was bigger and that is why Mrs. Rafferty wanted him.

⁸³ This would follow from his above-described experience of September 11 when, after realizing his mistake, he asked Meidar to drive the car so that he would be in a better position to carry out his bodyguard responsibilities. A great deal of violence had occurred

Continued

was behind the driver in the back seat; that all the windows of the vehicle were up because of the spitting and violence and he had instructed that the windows be closed at all times;⁸⁴ that the air-conditioner and the radio were on in the car; that as they exited Noblit the following occurred:

Well, we hadn't crossed it [, the picket line,] yet. We were approaching the south entrance, we were trying to exit out there, and the pickets were in front of the car.

Mr. Oliver was one I remember off the top of my head.

And the pickets were in front of the car, and we—as we were trying to exit, you know, they were on the sidewalk and we were on the Noblit property, and they were walking around in front there, that's when Mr. Oliver looked at me, because the day before, there was an altercation in front of the precinct, Girard, the pickup, and there was some fighting and things of that nature went on there, and Mr. Oliver looked at me and he motioned with his hand, like made a shape of a gun, and he put it to his head and he—as if he was pulling the trigger, and he pointed to me and he says, "Yeah, the hit's on your white ass. You're gonna get it. You're gonna get it."

You know, back and saying he was going to kill me and stuff like that, and then he like—he was right in front of the car, then he bent down and he pointed to Mr. Meidar and he goes, "That scumbag Munro isn't going to be with you every day. You know, one morning you are going to wake up and as you walk out your door, my face will be the last one you see on this earth."

At that point, you know, they continued walking around, and they eventually opened the line and we left[.]

that Meidar did not say anything to anybody; that the front grill of the car was at least 2 feet from the picket line; that Oliver said "[t]he hit's on your white ass";⁸⁵ and that in an affidavit he gave to the Board on October 4 he indicated that Oliver said the hit was on him and his brother.

Meidar testified, regarding this incident, that Varela and Munro were in the car with him, with Varela driving; that the car stopped at the picket line as it exited Noblit, with the front bumper at the beginning of the picket line; that Oliver threatened his and Munro's lives; that he did not say anything; that the car windows were closed and the car's air-conditioner (at least the fan) and radio were on; that when Oliver made the threats he was standing, Meidar believed, in front of the car by the left side of the car; that he was also not sure but he believed he was sitting behind the driver and, therefore, on the same side of the vehicle as Oliver; and that Oliver made the following statement:

since then. It does not follow, therefore, that Munro, especially with another Boyd guard in the car, would have sat behind the steering wheel.

⁸⁴ Boyd security guard Small corroborated this.

⁸⁵ Munro was not 100-percent sure that Oliver said this or "[t]he hit's on you and your brothers white asses" because assertedly one or the other was also uttered to him the day before.

He said to me something to the effect that white ass Munro is going to have to sleep in your house because one day I will come up to your house and the last face that you see will be mine.

He also said one day I will meet you in a dark alley and the whole thing will be over. He also said to me I am the godfather. You know the godfather. I am the real godfather. It is no longer an issue between the Union and Noblit, it is now between you and me.

I am not sure precisely, I think the godfather statement he made on the 25th. I am properly sure about that. The white ass Munro, I am quite sure he made on the 26th. The alley statement I am not sure whether he made on the 25th or 26th.⁸⁶

Varela testified that he drove, Munro was on the front passenger seat, and Meidar was in the back seat behind the driver's seat; that he stopped 4 to 5 feet from the picket line; that Oliver was on the picket line and he made the following statement:

He was, what he had said was directed to John Munro and Mr. Meidar—I—several things he has said, but from what I really recollect, it was that, "I am going to get you," using foul language.

He said, "I am going to get you motherfuckers." He also mentioned that, "The contract is on," he mentioned that, and then he started making gestures with the hand, assuming that he had a gun.

He had a paper folded up, he had it in his right hand, making gun gestures on it, at Mr. Munro and Meidar, they were at an angle for them to see the gesture of a gun.

he . . . said that Mr. Meidar, wherever he goes be better have John Monro [sic] on his ass, because one day, or the day that he answers the door, or answers a door or be at the door, that the face he will see is his [Oliver's] and it will be the last face, . . . that . . . [he] sees

that neither Meidar nor Munro said anything to Oliver or the pickets; that the car windows were closed; that Oliver went beyond the picket line onto Noblit property by the front of the car when he made his threats; that they were held at the picket line for about 15 minutes;⁸⁷ and that Oliver used the paper in his right hand to block the view of Civil Affairs officers, who were standing to his right, so that they could not see the gun gestures he was making with his left hand.⁸⁸

Ramon Ramos, who at the time was a truckdriver for Noblit/AMA, gave the following testimony regarding an incident which occurred on September 26. (It is noted the origi-

⁸⁶ Meidar testified that on September 25, Yom Kippur, he was summoned from temple and went to the plant, and Oliver made a statement as he, Meidar, crossed the picket line.

⁸⁷ He testified that he was aware that Noblit and the Union had entered into a consent decree, as set forth supra, which spoke to the allowable temporary blocking of vehicles.

⁸⁸ Varela further testified "He [Oliver] was standing like in an angle-wise towards the car, so that if there was any civil affairs on his left side, they could not see what he was doing."

nal complaint in aforementioned Case 4-CB-5114 alleged that this incident occurred on or about September 25.)

It was about 5:00 o'clock p.m., I don't remember . . . what day it was, there was about 30 to 20 picketers and there was more picketing on the picket line and mostly went to ten cars, and they stopped me at the picket line at least 15 to 1/2 hour at the picket line. And, I couldn't get out of there until, all the other—what are they called, some kind of cop, they were directing me out, inch by inch, so I could get out of Noblit, so I could go to U.P.S.

At that particular time I was already out and I make my left-hand turn to go to U.P.S. So they all started following me, about 10 cars and this red pickup with two side pipes . . . they were trying to cut me off, playing games over in the streets, and things like that.

So when I got to the P—some kind of—some kind of gas station, I was driving down through there, this white rambler, about '73 rambler cut the red pickup, the red pickup try to cut me off, as soon as the red pickup cut—cut the truck off, cut me off, the rambler came towards my side, the driver's side, and I see Al Quinones smiling at me.

All I seen that coming out of there was a 22 rifle, about 8—8 inch 18 inch, not so big. So, he came and he shot—shot at me. He smiled and he shot at me, and I slammed the brakes. I was ducked down. All of a sudden I hit the car in the back of the quarter panel. That's when they took off through a small middle street, and they got away.

That's when I had to go to 8th and Race, and put the truck inside there, police station. And I couldn't go nowhere else and showed the cops what would happen . . . the cops . . . asked me a lot of questions, how did things happen, I told them, I was shot.

Q. Why didn't you stay there?

A. Because there was two shooting and I didn't want to stay there, and I didn't get a chance to get off that truck. There was no other way to get to a police station.

JUDGE WEST: I am sorry for interrupting, but to make sure the record is very clear in this point, you said, "I was shot," did you mean the truck? You personally were not hit by any of the bullets were you?

WITNESS: No.

Ramos testified further that Quinones had threatened his life; that before he left Noblit/AMA with the truck he inspected it and he did not notice any hole in the side of the truck; that he first noticed a hole in the side of the truck by the driver's door at the police station; that although he wasn't present when the truck was subsequently photographed, and he didn't know who took the photograph, the photo (R. Exh. 178) accurately shows the condition of the truck after the shooting; that he thought the police arrested someone for this; that when he gave an affidavit to the Board on September 30 he did not know the name of Quinones; that Quinones was arrested and brought from New Jersey to a precinct house (apparently in Philadelphia) where he, Ramos, identified him; that there were four people in the rambler; that Quinones' window was down all the way when the car came alongside the truck; that half of Quinones' body was out the window; that the above-described affidavit is in error

in that in it he states "He [Quinones] rolled down the window"; that when he saw the rifle he slammed on the brakes and that is when Quinones fired the shot and that is when the escort van smashed into the back of the truck; that he testified in Federal court on November 1 that the window was down and Quinones rolled it down more; that what was shot at him was not a bullet but rather a pellet from an air pellet gun; and that after the pellet was fired he slammed on his brakes and the security van went into the back of his truck.

Lentz testified as follows about the truck:

Q. It wasn't in fact, a hole that went all the way through the truck, was it?

A. No, it was a dent in the side as I remember. Several dents.

Quinones testified that he never threatened Ramos, his life, his property, his family, or his friends; that he told Ramos to stop calling female striking employees "sluts" and "whores"; that Ramos threatened his life; that Ramos had a security guard in the truck with him the day he, Ramos, claims Quinones shot at him; that he was riding in a white Gremlin (American Motors) belonging to Tommy Tomaglia which followed the truck and the escort van; that the escort van had Boyd security guards and employees in it; that there were about three other vehicles following the truck and van; that on Delaware Avenue just before Spring Garden Street the van pulled away from the back of the truck and started passing Ramos' truck; that at that point Tomaglia decided to pass Ramos' truck and follow the van; that as they passed the truck, with enough room between the car and truck to put another car, Ramos swerved it and hit the side of the car; that Tomaglia was able to pull away from the truck; that Ramos chased them and when he turned on Spring Garden he had to brake and that is when the van, which was now behind the truck, hit the truck; that Tomaglia then turned down a small street and Ramos did not follow; that they went back to the picket line; that the only thing in the car was a picket sign; that he never shot at a truck driven by Ramos; that while he was questioned about the incident he was never charged criminally; that Ramos did not threaten his, Quinones', life but Ramos said he was "going to fuck . . . [Quinones'] car up"; and that he was aware that this incident was being videotaped.

Union cameraman Hawkins testified that he videotaped the incident (G.C. Exh. 100), while riding in one of the cars following Ramos' truck; that while the van originally was behind the Ramos' truck, at one point it was in front of Ramos' truck and then it pulled behind Ramos' truck; that Ramos' truck brake lights wet on just before he hit the Gremlin; that Ramos hit the Gremlin twice; that the van hit the back of Ramos' truck when he made the turn onto Spring Garden; and that Ramos then drove the truck to the police station at 8th and Race Street in Philadelphia known as the Round House.

At 7 a.m. on September 27, O'Farrell (a.k.a. replacement employee Lewis Jr.) was at the pickup spot on Girard Avenue. The only other replacement employee present was Hirschman, who called Noblit and was given the new pickup spot, namely, Front and Spring Garden. A Boyd security van picked up O'Farrell and Hirschman at that point and dropped them off at Noblit. O'Farrell testified that on arriving at

Noblit, Gertner stopped Hirschman and told him to go to the office; that Gertner then told O'Farrell to also go to the office; that Gertner left the office after a few minutes and when he returned Hirschman asked him if this was over signing union authorization cards; that in response to this question Gertner shook his head yes; that he then asked Gertner "if it was . . . [he and Hirschman] stopping at the picket line to see the regular employees that worked at Noblits and . . . [Gertner] said what are you talking about"; that Gertner then left the room; that replacement employee Nelson Lynn then opened the office door and told him and Hirschman that all the replacement employees were angry at them because they signed the cards and went to the picket line; that Gertner then returned and told them they were fired for strike disobedience; that he told Gertner his check was 3 days short and Gertner said it would be mailed; that there was no discussion about his rate of pay other than the paycheck not covering all the days he had worked; that he saw the picketers on the way out but he did not shake hands with them; that while working at Noblit he had two meetings with representatives of the Union to report what was happening at Noblit; that he never asked Gertner for more money because it didn't matter what he was paid since his purpose in working at Noblit was not to make money but rather to provide the Union with information on Noblit; and that the only reason he asked Wald about the pay rate at the above-described demonstration the day before was because he wanted the strike replacements to know what the difference in pay was between theirs and the strikers.

Hirschman corroborated the material portions of O'Farrell's testimony, adding that he, Hirschman, did not ask about the rate of pay because he was happy with it.

Gertner testified as follows regarding the alleged firings of O'Farrell and Hirschman:

On September 26 we had a massive demonstration in front of Noblit and another place on Girard Avenue. At that time, Mr. Lewis and Mr. Hirschman weren't present at work. The next day when they arrived on September 27th, it is a common procedure for the management for people who do not call in and say I am not going to be there for a reason to ask them what happened yesterday.

So that procedure occurred on Friday and at first I approached Mr. Hirschman and said happened yesterday. He said I couldn't make it. I was cut in the picket line. I was beaten by the strikers and so forth. So I say why don't we go into my office and sit down and talk about it, what happened. And when we went there, he said again he repeated about being abused by the strikers. I looked at the fellow and I said you look pretty good for a person who was beat up last night.

And he didn't comment. He just said I been with Lewis and at that point I called Lewis and I say what happened and he said yes they beat us up and like that. And after that, Lewis took over the conversation and said

. . . .

Lewis asked me directly a question to me is it true that previous employees of Noblit were to make at that time \$10.85 an hour and I said yes that is correct. He said he would like the same wage. Why don't we make

the same money. I said you were hired for \$6.00 an hour. You agreed to work for us and that is the conditions which you agreed to. And after he asked me for the \$10.85 an hour, I said I had to go and see my superior which is Alan Lentz which is the Vice-President of the company.

And I went to his office. I told him the problem. He asked me to wait inside in his office. He made a call to Mr. Marty Wald and consulted with him on the phone. And when he got off the phone the answer to me was we cannot meet their wage request.

At that point, I came back to the office and I told him fellows I cannot help you with asking for more money. I am not in a position to grant you any raises. You are more than welcome to stay and work if you wish. At that point they said no we don't want to work for you for . . . [\$6]. You can stick your job you know. I said here is Friday. The payroll was done at that point. I say I only think you can remain and work. If not, I will be more than happy to give you your checks which I did.

At that point I said well let me give you a security escort through the picket line you know because I was fearful of letting two young people go through a massive picket. I said you knew anything could happen. But they say we don't need any protection and at the minute they got their checks they walked out through the door. They walked through the picket line and shook hands with those people on the picket line. They emerged victorious. I don't know for what reason and they stayed on the picket line for probably an hour, an hour and a half and then they disappeared.

Gertner further testified that he did not know Lewis Jr.'s true identity at that time; that he did not know Hirschman and O'Farrell signed authorization cards at that time and such cards never came up during this meeting; that he did not tell them they were fired for strike disobedience; that these two employees were late on September 27 and that is why he wanted to speak to them; that he didn't ask to speak to any other employees who did not come to work on September 26; that about 50 percent of the employees (Noblit had about 32 replacement employees in the warehouse) came to work on September 26; that he saw Hirschman and Lewis Jr. at the picket line on September 26 and they were there a couple of hours; that he was not aware of any other replacement employee going on the picket line; that he did not ask Lewis Jr. to come to the office but rather he thought Hirschman went and got Lewis Jr.; that he told them they could stay at \$6 an hour but Lewis Jr. refused; that Hirschman and Lewis Jr. stayed on the picket line for about 30 minutes on September 27 and Philadelphia experienced a hurricane that day; that he later told Obergfell, who was out September 27, that these two quit; that he did not tell Dorothy Pflaumer that Hirschman and Lewis Jr. were terminated; and that he did not have conversations with the other approximately 15 warehouse employees who were out on September 26 because "I knew that they were turned back, most of them . . . [that] day so I knew their reasons."

Dorothy Pflaumer testified that she wrote "terminate" on the personnel files of Hirschman and Lewis Jr. not because she was instructed to write this but rather because they were

no longer with the Company and she did not know why they left; that if she knew that an employee quit she would write "quit" on the personnel file otherwise she wrote "terminate."⁸⁹

Lentz testified regarding Hirschman's and Lewis Jr.'s departure from Noblit as follows:

I think we reached a mutual decision on both parts, they *apparently* wanted more money than we were willing to pay, and therefore we agreed—they all agreed that they couldn't work for us anymore. [Emphasis added.]

Subsequently Hirschman applied for a job at the University of Pennsylvania. He testified that he believed that he indicated on his application for employment at the University that he was fired from Noblit for strike disobedience. The parties stipulated that Hirschman filled out an employment application at the University of Pennsylvania on September 30; that in giving his reason for leaving Noblit, Hirschman wrote "strike" and nothing else; that Hirschman was hired October 17; and that his initial rate of pay was \$7.50 an hour.

Theresa Wisler was hired by Noblit in August 1985 and she quit her job at the end of September 1985.⁹⁰ Wisler was hired as a customer service representative and she testified that before the strike she handled about one WMO a day because "they were pretty good with the flow, usually they were shipped the following day"; that she took over the switchboard operator's job a few days after the strike began; and that during that period of the strike while she was switchboard operator she received WMO calls constantly.

With respect to the speeches he gave to the replacement employees, Meidar testified that he never said that the strikers were out for good; that he never said that the strikers are never coming back; that, in effect, he told the employees that if they stuck by him and if they performed then they would have a job; and that because of the high turnover during the strike he had to assure replacement employees.⁹¹

⁸⁹ Dorothy Pflaumer testified that she changed the "terminate" on Hirschman's and O'Farrell's personnel files to "quit"; that these changes were made a few weeks before she testified herein on May 22, 1986; that the former's file was changed as a result of her checking timecards for some reason she could not recall and the latter's personnel file was changed as a result of Noblit's attorneys' office calling to check on the dates Lewis Jr. worked; and that these changes were made after the files were produced pursuant to a subpoena of General Counsel.

⁹⁰ Wisler testified that she quit because she did not feel safe going to work; that a girl riding in the same Boyd security van got glass in her eye when the van window was smashed and the police officers present did nothing; and that she did not believe that she was receiving adequate protection. Dorothy Pflaumer testified that she wrote terminate on Wisler's personnel file not because she was terminated but because Wisler was no longer with Noblit.

⁹¹ Regina Pflaumer testified that Meidar gave a speech about every other evening during the violent part of the strike; that during the speeches Meidar did not say striking employees were fired or that they were out for good; that Meidar said that replacement employees had a job as long as they worked and wanted to stay; and that Meidar never discussed how he would be able to keep replacement employees if the striking employees returned to work. Replacement employee Aaron Warren testified that Meidar told the employees during his speeches that they had a job there as long as they per-

Regarding certain changes which occurred after the strike commenced, Zimmerman testified that there was one accounts receivable person instead of the three before the strike, and there were less order writers. Senuik testified that the new computer eliminated manual steps and neither telemarketers nor customer service representatives did these steps.⁹² Stojak testified that she was trained in telemarketing before the strike and didn't do it then but she began telemarketing, making outgoing phone calls, after the strike commenced.

Allegedly a number of incidents involving strikers occurred sometime in September 1985. First, Susan Griffiths testified that a couple of days after the above-described September 26 demonstration, she was in a car with Meidar returning to the plant from Noblit attorney's office; and that apparently as they crossed the picket line Hurvitz told Griffiths "that's the why [she] keep[s] [her] . . . job . . . [she] suck[s] everybody and that . . . [she] gives great blow jobs especially to Moe Meidar." Hurvitz denied making such a statement.

Second, Warehouse Manager Edward Lichtenfield testified that striker Blanche Creighton banged on the side of Ted Haldis' car, kicked the tire, pointed her finger at the window and hollered; that Oliver and Yeoman had to pick her up and carry her; that Creighton was on the passenger side of Haldis' car and he, Lichtenfield, was in his car which was to the left of Haldis' car; that he is deaf in his right ear and could not hear what Creighton said; and that he was told to keep car windows shut and he did. Creighton denied ever kicking, touching, or banging on the side of a car driven by Haldis.

Third, Lichtenfield also testified that striker Tom Fisher said to him as he waited to cross the picket line "when we come back, you are gone. Remember when we come back you are gone"; and that the first time he told anyone in management or management's law firm about the above-described conduct of Creighton and Fisher was 1 week before he testified on May 9, 1986. Fisher denied making this statement.

Fourth, Scotkin testified that, when he was on Noblit's dock, striker Hurvitz yelled to him "Don't sleep too lightly tonight, sucker"; that the next morning he discovered that his van, which he parked on his property in back of his home, had four slashed tires; and that he told Lentz about the tires and the statement made by Hurvitz. Hurvitz denies making the above-described statement and she denies "flatten[ing] the tires on . . . Scotkin's car."

Fifth, Scotkin testified that strikers Tom Fisher and Terry Smith walked behind him ("followed" him) and Lichtenfield near the pickup and dropoff point; that "[o]ne of the security

formed their job. Warren testified that Meidar "made us feel it was permanent." Griffiths testified that she asked Meidar what happens if the strike ends and the strikers want to come back; and that Meidar said "as long as we are in litigation, no one knows." Siuda testified that Meidar said that as long as they did a good job they would be employed; and that based on what Meidar said she believed that her job was permanent. Ramos testified that he responded to an ad, in a newspaper and he believed that the job was temporary; and that his brother who works at Noblit, "got me over here."

⁹² Also he testified that in order to enter an order into the system with the computer a person has to be trained in the order entry program and customer service representatives and telemarketers have not received this training.

people in the van saw us being chased”⁹³ by them and he gave them a ride to Lichtenfield’s car; and that this occurred a day or two after the mass demonstration on Girard Avenue.⁹⁴ Fisher testified that he or Terry Smith might have stood there and called Scotkin and Lichtenfield a scab as they got off at the dropoff point but he never threatened either of these men or indicated that he would do any bodily harm to them. Smith testified that one day when Scotkin and Lichtenfield were dropped off at the Girard Avenue police station he⁹⁵ followed them about one half a block just walking behind them and calling them scabs; and that he did not touch them or indicate that he would do any sort of bodily harm to them.

Sixth, Lentz testified that during the week of September 9, while he was just outside of the plant trying to convince a truckdriver to cross the picket line, striker Elaine Childs came up to him and said “get the fuck back in the office where you belong. We know where you live”; and that on September 26 when he pulled into the yard, apparently referring to Noblit’s, he noticed the paint on his car was bubbling; and that he did not write down the Childs’ statement but it was one of the reasons for refusing to reinstate her.

Seventh, Gertner testified that striker David Robinson said to him as he, Gertner, crossed the picket line “be careful, don’t hit me. Because if you do so, I am going to kick your ass.” Robinson denies making this statement. Further he testified that he never, in connection with anything, threatened to harm Gertner.

Eighth, Gertner testified that Tom Fisher chased him several times after work on I-95 at a high speed trying to intimidate him. Fisher testified that he never followed Gertner home from work; that he also takes I-95 north to get home; and that he never was involved in any high-speed chases with Gertner.

Ninth, Gertner testified that on several occasions Terry Smith followed him on his way home.⁹⁶ Smith testified that he lives in the northeast of Philadelphia; that he has seen Gertner on his way home on occasion; that one time he saw Gertner in a shopping center while he, Smith, was on his way to pickup his wife at work; and that he never threatened to do bodily harm to Gertner.

Tenth, Meidar testified that every time he crossed the picket line striker Harry Costigan, who was an excellent employee, would (1) flash a 10-inch by 15-inch card with different antisemitic remarks, and (2) said antisemitic statements in German; and that Costigan suggested in German that he wished the Nazis had done a better job and that Meidar should be in hell. Costigan testified that he does not speak German; that he did not tell Meidar that he Costigan, wished

the Nazis had done a better job; and that he never made an antisemitic remark to Meidar.⁹⁷

Eleventh, Meidar testified that striker Tumolo also made antisemitic remarks; that she said (1) “they didn’t do a good job not killing him”; (2) the Arabs did not do a good job, (3) he should go back to Israel and get killed in a war or “go fight the fucking Arabs. Why are you fighting us here. You know we are going to see that you get out of the country”; and that he fought in the Israeli Army as a combat officer in two wars with the Arabs. Tumulo denies making antisemitic remarks to Meidar.⁹⁸ She concedes that she did tell him to go back to Israel.

And 12th, Feder testified that strikers Kurvitz and Wall speaking in harmony told her “Feder, we are going to get your condo, your mercedes and your husband”; that she told Lentz, Michael Seidelman, Bakely, and Breggar about the statement; and that she never made a written statement about this. Both Hurvitz and Wall deny making such a statement.⁹⁹

Joseph Farrell testified that he said “No shit” to Meidar only after Meidar talked about Farrell’s cancer operation and called him “bubblehead.”

Sharp testified that he did not pour ketchup on Manager Gill Sidelsky.

Kunevich testified that sometime after the strike began Noblit stopped using the old order blanks because the computer was able to have a price punched in or, in other words, override the price and there was no need for the old handwritten form.

Victor Fontanes testified that during the first week in October 1985 as he left work and waited at the picket line Elaine Childs walked in front of his car, pointed her finger and shouted “Victor you are done”; that he submitted a written statement regarding this to his supervisor, Gormley; that he believed that he was told by Gormley after the events in front of the police station to write down incidents that occurred to him on the picket line.

Griffiths testified that early in October 1985 she was in her car trying to leave Noblit/AMA; that she read magazines and did not look up during the 15-minute waiting period; that it was the normal practice for someone to tap on the front of the hood of her car when it was time to go; that Anderson banged on her car walked around to the driver’s side of Griffiths’ car and forcefully banged on the window; and that Anderson was on Noblit property when it happened. Anderson denied that this ever occurred.

⁹³ Scotkin explained that he used the word “chased” because Fisher and Smith kept pace with him and Lichtenfield although they were not running.

⁹⁴ At one point Scotkin testified that he wrote up this incident. Later he testified that he was confused and he did not write the incident up.

⁹⁵ Smith testified “we” followed them but he did not specifically indicate who the we included.

⁹⁶ Gertner also testified that the Union cameraman alone, who is not an employee of Noblit/AMA, followed him on two separate occasions.

⁹⁷ Regarding Respondent’s attorney’s position letter, which will be treated, *infra*, and an allegation contained therein, namely, that he yelled in a threatening manner at Scotkin “Wait until we get back in there,” Costigan testified that he never said it; that he did talk to Scotkin and Lichtenfield as they crossed the picket line; and that both said the people in the plant were doing a lousy job and Scotkin said he hoped Costigan would come back.

⁹⁸ Strikers Smith and Gershkovitz, who is Jewish, testified that they never heard anyone utter antisemitic remarks to Meidar as he crossed the picket line.

⁹⁹ The latter testified that she was sure she saw a sign on the picket line early in the strike with the words unfair labor practice dispute on it. On the other hand, Feder testified that she did not see any picket signs early in the strike refer to unfair labor practices; that she saw only those signs held close to the van and at a point she ignored pickets and read. Still pictures taken early in the strike, which pictures were shown to Wall on cross-examination, do not show that the signs refer to unfair labor practices. R. Exhs. 241–246.

Creighton testified that she never spit at anyone who crossed the picket line and she never spit at anyone who did business with Noblit.

Regina Pflaumer testified that striker Wall told her mother, Dorothy Pflaumer, "she knew . . . her [Dorothy Pflaumer's] grandson Clint went to school at St. Cecilia and she would get him";¹⁰⁰ and that Wall "repeatedly said she would get us and when she came back to work she would make things miserable." Wall testified that she never said to either Dorothy or Regina Pflaumer "we know where you live. We're going to get you" or that "we will get your grandson, Clint at the St. Cecilia school"; that while she knew Dorothy Pflaumer had a grandson she did not know where he went to school; that she never said to Regina Pflaumer "You'll pay for this we'll see what happens when we get our jobs back."

William Christy, an employee of the Bell Telephone Company of Pennsylvania, is the custodian of records for the anonymous call center in Lansdown, Pennsylvania. He testified that a circuit trace was placed on Noblit/AMA's telephone at their behest; that a successful trace occurs when the telephone company is able to trace four calls to the same number over two different dates or three calls to the same number on one day; that the telephone company was able to trace two numbers; that a tracing report for October 2, 3, 4, and 7 (R. Exh. 201) shows that Noblit/AMA received four calls from Gershkovitz' phone on October 3, and one call on October 4; that Noblit/AMA's switchboard operator characterized these calls as either cursing or hangup (R. Exhs. 201 and 202); and supporting printouts (R. Exh. 203); that actually Respondent's switchboard operator did not ever list the third above-described call and the "hang up" designation by the telephone company on Respondent's Exhibit 202 could be an error; that if all of Noblit's incoming lines were busy at the time the Noblit switchboard operator designates for receiving an harassing call, the telephone company would not include all the numbers of the incoming calls in its report but rather it would list those who had called once before; that if there wasn't a call at the time designated by Noblit's switchboard, the telephone company clerk, would pick the call closest to the time designated by Noblit's switchboard operator; that the telephone company sent Gershkovitz a letter dated October 18 advising him that (a) his telephone was identified as the calling number with respect to harassing calls to Noblit/AMA and (b) his phone would be disconnected "if additional annoyance calls are made from the phone for which you are responsible;¹⁰¹ and that he did not know if Noblit/AMA had this information before a deposition was given on January 21, 1986, but the standard operating procedure is for his office to turn it over to the telephone company's security department and then it would have been up to Noblit/AMA to get the information.

Gershkovitz testified that he did not make repeated harassing phone calls to Respondent in an attempt to tie up

the switchboard; that he did make four calls to Respondent on October 3 to try to get the extra pair of prescription sunglasses worth \$70 which he left in a box in the showroom; that he told the switchboard operator that he was a striker and he wanted to speak with somebody to get his property, and he was put on hold; that he hung up "after a while" and then called back only to be very abruptly put on hold again; that he thinks he called back again that day but was again put on hold after he told the operator who he was; that he called back the next day, October 4, and again was put on hold; that he never did get his glasses back; that he doesn't remember whether he called any other time to get his glasses; that during these calls, he did not use obscenities, he did not curse, and he did not threaten anyone; and that the first time he found out about the alleged annoying phone calls was when he received a letter from Noblit in March 1986, advising him that he was not eligible for reinstatement and he contacted the Union to find out what was going on and was advised of the alleged calls. On cross-examination Gershkovitz conceded that during the strike he spoke to Meidar more than once and he never asked to have his glasses returned;¹⁰² that he never wrote a letter to the Company indicating this his glasses were there; that before March 1986 he did not contact the Union in an attempt to get his eyeglasses back; that he made no effort to call the Company about his eyeglasses before October 3; that he made no effort after October to get his glasses back; that between September 4 and June 2 he was on the picket line pretty much every day and he never told any supervisor that he wanted his glasses back.

Feder testified that she was the switchboard operator from when Wisler left until Siuda came to the Company; that the period involved was from the middle of September 1985 until the middle of October 1985; that while she was on the switchboard she received anywhere from 10 harassing calls a day to any number all day long; that these calls ranged from hangups to cursing, to blow dryers to screaming; that she recognized only one of the voices which she heard, namely, Gershkovitz; that over the years she spoke with him at Noblit; that he screamed the same things to her when she walked out of Noblit, viz, "You old whore, you slut"; that while she was on the switchboard she kept, when possible, a log of harassing phone calls on a yellow lined pad in the switchboard operator's drawer; that the phone company would call her and she would convey the information from the sheets she had; that she did not have the log and could not recall if she made an entry on it regarding the Gershkovitz calls; that she did not tell Lentz about Gershkovitz' phone calls; that she could not be sure that he called several times on one day because she could only recall a total of two telephone calls on 2 days and she could not recall if they were consecutive days;¹⁰³ that she was not told

¹⁰⁰ Dorothy Pflaumer corroborated this testifying that it occurred while they were waiting at the picket line to come to work one morning; that she told Lentz about this incident; and that Wall was mistaken about her grandson attending St. Cecilia's.

¹⁰¹ It was stipulated by Respondent and the Union that this letter was sent by certified mail on October 21 and it was returned unclaimed to sender on or about November 8. Christy did not know if another letter was sent to Gershkovitz.

¹⁰² The two specific occasions involved an emergency phone call from his brother indicating that he should call home and an extensive discussion about the negotiations. Gershkovitz explained that the matters at hand on these two occasions were more important than getting his eyeglasses back.

¹⁰³ Feder testified that the first time Gershkovitz said "You old whore, you slut" and the second time he said "You're dead, you old whore and slut"; and that she found out from one of Respond-

to preserve the telephone log so that it could be used to prosecute the phone callers who were making harassing phone calls; that of the hundreds of harassing phone calls she received Gershkovitz was the only caller she could identify but she did not believe that was important enough at the time to mention to anybody in the Company; and that when she spoke to the telephone company representative providing the information for them to conduct a trace, i.e., what type of harassing phone calls received at what time, she didn't think to tell the representatives that she recognized Gershkovitz as being an individual who made a harassing call at a specified time on a specified day. Gershkovitz denied Feder's allegations both with respect to the telephone calls and what she alleged he said when she walked out of Noblit.

Gertner testified that he was responsible for the hiring of the truckdrivers; that Boyd did not assist him in any way in securing the truckdrivers; that he was the person who interviewed them; that he hired two truckdrivers since October 1985; that Foulk was a truckdriver and he responded to an ad in the paper; that truckdriver David Hofkins applied for a job and he was hired that same day, October 8; that truckdriver Wilson Pitts applied for a job on October 7 and a week later he told Gertner that he could start on October 28 and that was his starting date; that he took the initial interview of Pitts; that he could not explain why there is a page in the application that says for interviewers use, interviewed by David Blair Speyer;¹⁰⁴ that he did not know who Speyer is; that the above-described page indicates interviewed by David Blair Speyer date 10/7, 11:30 a.m.; that Pitts apparently signed the application on 10/7/85; that he "interviewed Mr. Pitts too"; that he did not confer with anyone before hiring Pitts;¹⁰⁵ that he did not recall whether Pitts' application, when he received it, had "Highly Recommended" written on it;¹⁰⁶ that he did not write "Rate 5 +" in a circle on the front page of the application and he had no idea what it meant; that he did not make any notes on Pitts' application; that he had Pitts' application on his desk along with other applications;¹⁰⁷ that he called Pitts and asked him if he was still interested in the job and they set up an interview; and that he interviewed Pitts on October 7 or a day later.

Speyer testified after Gertner that he, Speyer, was employed in 1985 at the law firm used by Respondent; that he was involved with interviewing applicants for jobs at Noblit after the strike commenced;¹⁰⁸ that he interviewed between 75 and 100 applicants at the Treadway Motor Lodge Motor Inn on Roosevelt Boulevard, Philadelphia; that he filled out the third page, the interviewer's sheet, on Pitts' application

(G.C. Exh. 105; that he wrote the words "Highly Recommended Driver" on the upper left hand corner of the first page, "Highly Recommend" in the center of the first page and "Rate 5 +" on the first page with a circle around it and that he always filled out these pertinent interviewer's sheet.

A truck driven by Noblit truckdriver Ramos was involved in a collision with a picketer's car just outside a Best Western Hotel in Philadelphia on the evening of October 8.¹⁰⁹ Ramos testified that he did not tell Quinones after this collision "[s]ee this is what you get when you mess with me." Quinones testified that Ramos had told him "plenty of times that he was going to destroy me and destroy my car"; and that after the collision Ramos said, "That's what the fuck you get for following me." The police took Ramos into custody at the scene of collision.

Dorothy Pflaumer wrote "terminate" on Ramos' file and later crossed the word out. She testified that she thought Lentz told her to take Ramos off the payroll.

Lentz testified that he told Dorothy Pflaumer when Ramos was arrested and put in jail that he should be taken off the payroll; that what he meant was that Noblit would not pay him while he was in jail; and that if she wrote terminate on Ramos' personnel file she misunderstood him.

On the evening of October 9 Varela was involved in an incident with Noblit truckdriver Genoa and some union pickets just outside the aforementioned Best Western Hotel. Varela testified that he was taken into custody by the police. Part of what occurred was videotaped by Hawkins, the union cameraman. (G.C. Exh. 100.) While it does not appear on the film, Hawkins testified that by keeping both eyes open during filming he saw Genoa pound on the hood of the car occupied by the picketers and he heard him yell, "I'm going to get your ass now and I'm going to kill you." The film shows the police searching two individuals and removing objects from their person. Hawkins testified that one of the objects was a knife. Sharp testified that he was in the involved car; that its occupants were at the Best Western Hotel to follow the truck to do some ambulatory picketing; that they followed the truck to the hotel and they were going to set up their picketing; that the driver of the truck ran over to the car and shook it and threatened its occupants saying that he was going to kill them; that a Boyd captain or sergeant was present, and the police pulled a knife out of his boot; and that the Boyd individual was arrested at the scene.

One of the vans transporting replacement employees to the dropoff point on Girard Avenue on October 11 apparently ran out of gas. Two other vans utilized for the same purpose accompanied it. Also, a number of picketers followed in their cars. When the van was pushed to the side of the road a confrontation occurred between Boyd guards and replacement employees on the one side, and on the other side, picketers, which included individuals who were not employees of Noblit/AMA. Windows in the vehicles used by both sides were smashed. One individual suffered injuries sufficient enough to be taken to the hospital. A few of the participants froheach side were arrested. And eventually all charges were dropped. Of those present, Varela, Hawkins, and replacement employee Linda Rollins testified about the incident. And the

ent's attorneys 2 weeks before testifying herein that the telephone company traced two calls to Gershkovitz.

¹⁰⁴ Speyer, who is a legal assistant in Respondent's law firm, subsequently testified that he conducted interviews on two separate occasions, viz, once in September 1985 and once in the week of October 7; and that pursuant to the newspaper ad the applicants were looking for a Mr. Jackson.

¹⁰⁵ Gertner testified that he personally checked Pitts' references.

¹⁰⁶ These words appear on the front of the application, and on the third page which is designated for interviewer's use.

¹⁰⁷ The parties stipulated that the application of another Noblit replacement employee, Warren, involved one large sheet of paper folded in half so that there are four printed (in green ink) pages (not photostated) and the last page on the interviewer's page.

¹⁰⁸ One of the applications of replacement worker Nelson Lynn, dated August 26, indicates that he was interviewed by Speyer.

¹⁰⁹ A segment of G.C. Exh. 100, the videotape, deals with the incident. It does not, however, show the collision.

segment of the Union's videotape (G.C. Exh. 100), dealing with this incident was received in evidence.

Meidar fired Boyd Security on October 21 after the Union filed a motion for contempt and Judge Avellino, as Wald testified, "told . . . Meidar in effect to discontinue [using Boyd] or go to jail."¹¹⁰

The parties entered into the following stipulations regarding October 22:

That the signed affidavits of Carol Anderson, Elaine Childs, Blanche Creighton, Joseph Farrell, Margaret Goral, Thomas Lavin, Burton Moore, Thomas Fisher, Alvaro Quinones, Melvin Sharp and Maria Tumolo were attached to the Petition for Injunction filed by the Regional Director for the Fourth Region on behalf of the Board on October 22, 1985 in the United States District Court for the Eastern District of Pennsylvania. By entering into this Stipulation, Noblit-AMA are not admitting that any of their managers, supervisors or employees knew that the affidavits of the above persons were attached to said petition. [(G.C. Exh. 2.)]

Mr. Price: . . . [t]hat the temporary restraining order was entered on October 22, 1985 and although that was scheduled to expire 10 days later, that was extended for some period of time upon motions by the Regional Director.

The hearing on the petition for the 10 day injunction was extended over quite some period of time and when the second deadline after the first extension expired, it was not extended again but the injunction was entered shortly thereafter. And the Judge had indicated to the parties that if there are any problems in the short period, that to bring it to the attention and then take some steps.

But there was a temporary restraining order entered on October 22nd which was in effect for some period of time and there was a short gap between that injunction entered on November 21st. Although [as] I said the Judge indicated that he would take steps, entertain a petition for any problems that would occur in that short gap.

Ms. Joseph: Yes. Just so it is clear on the record, this is the injunction vis a vis the Union, Your Honor, that forced a consent decree concerning the Employer too. What we are talking about here is just concerning the union.

On October 23 Meidar appeared before Judge Avellino advising him that Noblit/AMA had replaced Boyd with a new security firm. Meidar testified that while he was in the courtroom that day he had the following conversation with Yeoman:

. . . he came to me and said something to the effect that why don't you get rid of those scumbags. They are temporary employees anyhow. And we assure you that once we have a contract, we will not strike you. And my reply was to him that I object to his language. They are not scumbags. And he might use another word. I

am not trying to be precise whether he used scumbag or a similar word. It is difficult for me to remember.

And I said I object to your language and in addition to that, they are not temporary. They are permanent and I would be very happy to talk to you anytime and sit and negotiate anything you wish. And he said to me it is not up to me to negotiate. Why don't you call John Morris. And I said well John knows my number, he can call me. And he said to me you call John and I said okay, I will call John. And we called John and negotiated thereafter. Nothing came out of it but it was the beginning for a new wave of negotiation.

Dorothy Pflaumer testified that in late October 1985 she became aware of a box where written notations of alleged picket line misconduct could be placed; and that she did put something in the box.¹¹¹

Griffiths testified that sometime after the Federal Court Injunction, October 22, a box was set up and those working in Noblit were instructed to put in the box written statements regarding their observations of strikers who violated the injunction.

Griffiths also testified that a list of strikers was passed around and she and others working at Noblit were supposed to check off the names of people who they saw acting in an unlawful manner; and that there was a memo at the top of the list with instruction.

Covey testified that Obergfell told him that the supervisors would get together and review the list of strikers and discuss some of the people they had complaints about; that when he saw the list of strikers it had checkmarks; that he and Hulyeau and some of the supervisors got together and they agreed regarding who they saw in the crowd at the Girard Avenue police station on September 26; and that he didn't recall whether the name of Melvin Sharp came up; and that while he told someone in Noblit/AMA management about the incident with Melvin Sharp he could not recall whether he did so in 1985.

¹¹¹ She testified that she was not aware in October 1985 of a list of strikers which was to be checked off if they engaged in misconduct. Regarding another list, she testified that she did not recall giving John Munro a list of names and addresses and phone numbers of strikers; and that she would not have given John Munro a list in her own handwriting. On cross-examination Lentz testified that Union's Exh. 31, which is a list of seven strikers; namely, Farrell, Terry Smith, Fisher, Nefferdorf, Quinones, Costigan, and George Boruch, and their addresses appear to be Dorothy Pflaumer's handwriting; that he never saw the list before; and that he did not know whether or not she made a list for John Munro. Quinones testified that he gave an affidavit to the Board on October 3 in which he indicated that John Munro (a) told him that he had a contract on him, (b) told him he knew his, Quinones', address and then stated it and (c) said to a guard "Don't worry about him, because I am going to get him . . . I have a contract on him"; that he failed to mention, because it slipped his mind at that time, that Munro had a list—a piece of paper"; that when Munro told a guard who assertedly was attempting to engage Quinones in a physical confrontation not to worry about Quinones because he, Munro, had a contract on Quinones and he then opened up a piece of paper, shook it back and forth, and read Quinones' address; that Munro was 4 to 5 feet away from Quinones; and that Munro told Quinones more than once that he had a contract on him and the first time, as described above, occurred before the September 25 confrontation at the Girard Avenue police station.

¹¹⁰ Wald also testified that Boyd Security was used in prior Teamsters strikes in Philadelphia, namely, Northwest Turkey, Leaseway, and John Wannamaker.

Obergfell testified that he met with the supervisors who work for him namely, Covey, Lichtenfield, and Gertner, regarding the list of strikers,

Gertner testified that he knew a list of strikers existed but "we were not supposed to do anything with it"; that he did not put a checkmark next to anyone's name on the list; that he was never instructed to do anything with the list; and that Obergfell never spoke to him about the list.

Gormley testified that after the September 26 incident, while he was waiting at the picket line, striker Melvin Sharp told him, "We will get your other eye"; that when the list of strikers was circulated he checked off Sharp's name; that he did not recall whether he reduced the incident to writing; that after he put a checkmark on the list he told one of Noblit's attorneys about the incident but he could not recall when he told the attorney, where he told the attorney, or who contacted whom; that he told some one from Noblit or from the law firm; that when the list of strikers was circulated he was instructed to check off any employee on the list who committed acts on the line that would be cause for dismissal;¹¹² and that when Sharp made the statement Obergfell was in the car. Sharp denied ever making any statement to Gormley about getting his other eye.

The following letter (G.C. Exh. 59) was hand delivered:

October 25, 1985

Mr. Alan Lentz
Vice President, Finance
Noblit Brothers, Inc.
2055 Richmond & Norris Streets
Philadelphia, Pa., 19125

Dear Sir:

Please be advised that Teamsters Union Local No. 115 hereby makes an unconditional offer to return to work on behalf of all the employees of Noblit Brothers, Inc. and A.M.A. Manufacturing Corporation who are within the bargaining unit represented by this Local Union.

In view of this unconditional offer, the strike against Noblit and A.M.A. is now terminated. All employees will report to work at their normal starting time on Tuesday, October 29, 1985.

If you have any questions, you may contact the undersigned.

Sincerely,
Joseph Yeoman
President
Teamsters Union Local No. 115

The parties stipulated that after October 28 specified employees¹¹³ filed for unemployment compensation benefits.

¹¹² Subsequently Gormley testified that he was supposed to check off anyone he saw commit an unlawful act on the line and the cause for dismissal may have come later.

¹¹³ Burton Moore; Lossie Hicks, John Humbart, Maria Tumolo, Thomas Fisher, Andrew Juhas, Rosanne Rafferty, Warren Nash, Patrick Nefferdorf, Ernst Dicken, Juanita Lupton, Joseph Adams, James Skea, Jr., Eberton Mills, Thomas Quinn, Harry Costigan, Melvin Sharp, Theresa Boyle, Carol Anderson, Michael Rosato, Joseph Farrell, Carl Gershkovitz, Lois Etheridge, Suzanna Floyd, Suzanna Petrella, Brenda Hepworth, George Boruch, John Krzywicki, Alvaro

Some involved reopened claims for those who were on layoff before the strike.

When asked why he didn't discharge the replacements to rehire the strikers Meidar testified as follows:

Because I made a commitment. I had an obligation. Early on when the strike started, I was hoping, I was probably naive to a point, that the strike would be a very short one. Also I was reassured by the union members and leaders that it was going to be a long strike. Early on I thought it was going to be a short strike and my intent was to bring people on a temporary base.

But once the violence started, and once I recognized that I had to make a commitment to the people, otherwise they all going to leave, the situation changed and they become permanent.

Also, he testified that since the Union wrote the letter offering to return to work the Company has not hired any new employees in any positions formerly occupied by union personnel.¹¹⁴

By letter dated October 28 (G.C. Exh. 60) Meidar responded to the Union's offer as follows:

Dear Mr. Yeoman:

This letter is in response to yours of Friday, October 25.

You are to be informed of the following. First, all positions are filled. However, we are mindful of the rights resulting from your unconditional offer of reinstatement and will act according to the law.

As you are the agent for the union, we would appreciate your notifying your members not to report to work unless and until notified otherwise. They will not be allowed to enter the premises on Tuesday, October 29, 1985.

We are somewhat confused by your October 25, 1985 letter and what followed it. Your letter stated that "the strike against Noblit and A.M.A. is now terminated." However, there was picketing Friday night, Saturday, and Sunday and this morning. If the strike is over, why is there picketing? Second, we have received many reports that your members have declared that they would come in and destroy the Company from within; also that they would get even with management, especially the warehouse management, with the result that the latter would be forced to leave. These happenings appear to us to be inconsistent with your written declaration that the strike is over.

Quinones, Winnefred Wall, Alford Mayer, Rosemary Murphy, Raymond Barthelomew, Elaine Childs, Susan McDonald, Vivian Russikoff, Angela Dominges, Joslyn Dean, Thomas Greene, George Harris, Anna Maria Albertson, Ben Sandler, James Scanlon, Margaret Goral, Dolores Hart, Elsie Kuzinski, Thomas Lavin, Alice Revis, James Zinc, Heather Hurvitz, Terry Smith, Marion Shields, Pat Noblit, Maryann Babiarz, Alice Revis, David Robinson; Rose Marie Kashow, and Jeanette Kueny.

¹¹⁴ Zimmerman earlier gave similar testimony. Meidar, Lentz, and Gertner testified about specified employees hired during or after October 1985.

We look forward to meeting you soon to enter into a new collective bargaining agreement, including a strike settlement agreement.

The Union responded as follows (G.C. Exh. 61):

October 30, 1985

Dear Mr. Meidar:

I am in receipt of your letter of October 28, 1985 concerning this Local Union's unconditional offer, on behalf of each and every employee in the bargaining unit of Noblit and AMA, to return to work. You indicate in your letter that the employees will not be reinstated at this time.

Please be advised that as unfair labor practice strikers, the employees are entitled to immediate reinstatement. In addition, it is our understanding that no permanent replacements were hired. On this basis also, the employees are entitled to immediate reinstatement even if you consider them to be economic strikers. In any event, they are entitled to immediate reinstatement and your failure to recognize that will subject you to further penalty of law, including but not limited to back wages and benefits.

You further raise in your letter some concerns about the striking employees if they were to return to work. You may rest assured that the employees would perform their work, as always, to the best of their ability and would not engage in any untoward conduct. Indeed, we request that you provide us with information as to the basis of your assertions to the contrary since we believe that those assertions are both unfounded and untrue.

In addition, the Local Union requests that you provide it with the names and addresses of the replacement employees, as well as their date of hire, job classifications and rates of pay and all benefits.

Finally, the unconditional offer of reinstatement made on behalf of the employees still stands. Your failure to act in accordance with the law in response to that offer is unfortunate and indicates a very real desire to prolong this situation. Nonetheless, the Union is prepared to resume negotiations and we ask that you contact us so that we may arrange a mutually convenient time to meet.

Very truly yours,

John P. Morris
Secretary Treasurer
Union Local No. 115

Striker Costigan filed a claim for unemployment insurance on October 30. (G.C. Exh. 106.) The second page of the exhibit is the Employer's statement. In it Lentz checked off the yes box indicating that he anticipated rehiring this individual. Lentz dated the statement November 5. The statement refers to a letter,¹¹⁵ also attached, from Lentz dated November 5 which reads as follows:

Interstate Claims Office
Office of Employment Security

¹¹⁵ Counsel stipulated to the authenticity of the document.

P.O. Box 3561

Harrisburg, PA 17121

Subject: Unemployment Compensation Requests

This employee's unemployment is due to a strike that began on September 4, 1985. As a result of the strike, all positions have been filled by other employees. At the present time, no positions are available because of the strike. On October 25, 1985, the union, Teamsters Local No. 115, made what it called an "unconditional offer to return to work" effective on October 29, 1985. This is not a valid or bona fide offer. The union did not state the terms under which its members would be willing to return to work. On October 28, 1985, the employer wrote to the union and advised them, among other matters, that it looked forward to meeting with the union to enter into a new collective bargaining agreement, including a strike settlement agreement. No such agreement has been reached and the strike and picketing has continued.

Meidar sent the following letter (G.C. Exh. 62) to the Union on November 4:

Dear Mr. Morris:

This has reference to your letter of October 30, 1985.

I do not agree that this is an unfair labor practice strike. For your information, the current wage scales exist:

Noblit Warehouse—\$6.00/hour to \$7.00/hour

A.M.A. Mfg. Co.—\$6.00/hour

Noblit Office—\$6.00/hour to \$8.125/hour

Contrary to your statement, no replacement workers were hired on a temporary basis.

Because of threats, intimidation, and actual violence committed by the strikers against the replacement workers, I cannot comply with your request to provide you with the name and addresses of the replacement workers.

I do not feel it appropriate to discuss the balance of your letter at this time.

Eighteen employees¹¹⁶ who went out on strike received the following one-sentence letter (G.C. Exhs. 9–26, respectively) dated November 5, signed by Lentz: "This is to notify you that you are not eligible for reinstatement in your job due to serious strike misconduct."

With respect to these letters Lentz testified that he circulated a computer printout list of all employees who had been employed prior to the strike;¹¹⁷ that the list was cir-

¹¹⁶ Anderson, Childs, Costigan, Creighton, Farrell, Thomas Fisher, Hepworth, Hurvitz, Lupton, Warren Nash, Nefferdorf, Quinn, Quinones, David Robinson, Sharp, Terry Smith, Tumolo, and Wall.

¹¹⁷ The list was marked for identification as R. Exh. 193. It was not received in evidence since albeit it was covered in General Counsel's subpoena it was not produced until after General Counsel rested. This matter will be dealt with more fully infra. It is sufficient here to note that the exhibit was placed in the rejected exhibit file; that certain of the individuals on the list have a checkmark next to their names (it appears that all of the checkmarks were made with the same felt-tip marker and possibly by the same person); that the margin contains, next to certain of the names, a word or words such

Continued

culated to the supervisors and then to employees and “they were asked to check off the names of those they felt had engaged in any kind of illegal or threatening activity”; that he did not specify what kinds of illegal or threatening activity was to be considered; that

When the list came back to . . . [him] . . . [he] then interviewed the supervisors and the various employees to determine what activity they had witnessed to or had happened to them and then based on that . . . [he] determined who [to] send the letters to;

that he sent the letter to Childs for one reason, namely, that she said to him “we know where you live”; that he sent the letter to Anderson because Stojak complained to him that Anderson spit on her and cursed at her on September 25 and there were no other reasons; that he did not remember who he spoke to about specified employees and, without referring to the list, he could not remember why he sent them a letter¹¹⁸ that he believed Gertner complained about Joseph Farrell regarding the incident at Northern Metals when a truck window was smashed or possibly regarding an incident or incidents at Consolidated Freightways; that a letter was sent to Tom Fisher because he hit Obergfell on September 26 and because he was involved (Lentz could not say how) in the incident at Northern Metals where truck windows were broken and van keys were stolen and the incidents at Consolidated Freightways; that a letter was sent to Hepworth because Griffiths told him that Hepworth admitted to her (subsequently Lentz testified that he was told Hepworth either admitted or didn’t deny it) that she, Hepworth, had made the phone calls to tie up the switchboard; that there is no evi-

as “threats” “cursing” “spit” or “throwing” all in the same handwriting (Lentz apparently made all of these notations); and that, as at least one witness who saw the list testified, there were no signatures or initials on the list of the person who allegedly complained about the misconduct.

¹¹⁸Costigan, Creighton, Hurvitz, Dave Robinson, Quinn, Nefferdorf, Sharp, and Tumolo. On redirect, counsel for Respondent, utilizing letters Lentz sent to the office of Employment Security regarding unemployment compensation requests, had Lentz testify that Sharp, quoting from the letter, R. Exh. 197, “made threats upon the safety and well being of management personnel at various times during the strike”; that Creighton, again quoting from a similar letter, R. Exh. 198, “threw objects, cursed and spat at other employees at various times during the strike”; and that Nefferdorf and Quinn, quoting from similar letters, R. Exhs. 199 and 200, respectively, “physically assaulted employees of the firm and made threats on the well being of others.” The body of the letters, treated in this note, are the same as that set forth above regarding Costigan except that they contain two additional paragraphs. One is the language quoted in this note. The other reads the same for each of the individuals specified, namely, “In addition, if there were vacancies, this particular employee would not be entitled to re-employment because of willful misconduct engaged in during the strike.” Lentz also testified that Costigan might have been declared ineligible for reinstatement for making antisemitic remarks to Meidar but he did not remember.

dence from the telephone company that Hepworth was involved in tying up the switchboard; that John Munro told him that Lupton hit him on September 25; that he made the decision on who was ineligible for reinstatement without discussing the specific employees with Respondent’s law firm; that he spoke to Ramos about Quinones and the alleged shooting incident and apparently, as indicated above, he saw the “[s]everal dents” in the side of the trunk;¹¹⁹ that Santos received a letter as a result of her involvement in the incident where allegedly Anderson threatened and spit on Stojak; that Terry Smith received a letter because he, Lentz, was told by Gertner and Obergfell that Smith was involved with Tom Fisher in hitting Obergfell and in the incidents at Consolidated Freightways and Northern Metals; and that Wall received a letter because Dorothy and Regina Pflaumer told him Wall threatened the former’s grandson.

While the above-described alleged misconduct occurred sometime before November 5, Lentz explained that he waited until November 5 to notify certain employees that they were ineligible for reinstatement because

Well, until then, first we were very busy and I didn’t have the time to do it but we had talked about it.

Secondly, after the unemployment claims were filed, we were advised that the only—that a good defense against paying unemployment claims were to describe to the unemployment bureau that these people had been guilty of strike misconduct and were not eligible to return to work.

That was why we picked that time to write those letters.

I only had, as a matter of fact, three or four days to do it because of the time span. You have to answer those unemployment requests within three or four days after you get them, so it was done rather quickly.

Meidar testified that he thought he mentioned the above-described driving incident with Quinones to Lentz; and that he was sure he told Lentz about the antisemitic remarks of Tumolo and Costigan in September 1985.

Hepworth testified that during the strike she did not at any time make repeated phone calls to Noblit/AMA’s switchboard and she never told any fellow employee or anyone in Noblit/AMA management that she did so. Subsequently, during the trial herein one of the counsel for Respondent stated that since the only evidence Respondent had regarding Hepworth’s alleged misconduct was inadmissible hearsay evidence, Respondent was willing to withdraw the letter of notification to Hepworth of ineligibility for reinstatement.

On November 12 Morris sent the following letter (G.C. Exh. 63) to Meidar:

¹¹⁹Lentz testified that he was aware Ramos allegedly ran into someone’s car; that Ramos was arrested and incarcerated; and that Noblit posted bail for Ramos.

Dear Mr. Meidar:

I have reviewed your letter to me of November 4, 1985. I am somewhat surprised by some of the comments that you have made therein.

In particular, your assertion that no replacement workers were hired on a temporary basis is somewhat hard to fathom. It is our understanding that the replacement employees were hired on a temporary basis. We specifically request that you provide the local union with information to support your contrary contention.

With respect to the status of the strike we must express our total disagreement with your view that the union is not engaged in an unfair labor practice strike. To the contrary, the strike was precipitated by the company is [sic] unfair labor practices. It has been prolonged by those unfair labor practices.

It appears to the local union at this time that you are simply engaging in union busting. Throughout the last two months, the local union has been prepared to meet with you in order to reach a fair and equitable collective bargaining agreement. It is obvious at this point in time that you do not desire to reach such an agreement. Indeed, your refusal to reinstate the striking employees based in their unconditional offer, an offer that still stands, only leaves us with the impression that your actions throughout have not been taken in good faith.

The local union is desirous of reaching a fair solution here. The lack of good faith exhibited by the company, however, together with the discharge of the striking employees and the refusal to lawfully respond to the unconditional offer to return to work, makes such a resolution doubtful. Nonetheless, the local union will continue to negotiate in good faith in an attempt to resolve this dispute.

With respect to the first negotiating session held after the strike began, November 14, Lentz testified that the Union's proposal (R. Exh. 192), among other things, called for no changes in the contract language, wage increases of 60 cents the first year, 60 cents the second year, and 60 cents the third year; that Wald asked the union representatives if they were willing to return to work at the rate Respondent was then paying replacement workers; that the only response Wald received was the above-described union proposals; and that Union Vice President Sheahan asked if AMA had been sold and when he was told it had not he said that he did not want AMA to be sold.¹²⁰

Respondent's position statement signed by Respondent's Attorney Price dated December 2 was received. (G.C. Exh. 104.) It provides the alleged reasons why 19 of the strikers were denied reinstatement, and it is attached as Appendix B.

While Respondent first opposed the granting of unemployment compensation claims to all employees who filed, Lentz testified that Respondent eventually withdrew their appeal of the granting of these benefits.¹²¹

In February 1986 Alex Able, Meidar's brother-in-law, was placed in charge of telemarketing, in addition to being the

supervisor of computing and customer service. At that time, according to the testimony of Feder, a division occurred between telemarketing and customer service.

By letter dated March 20, 1986 (G.C. Exh. 71), Lentz advised Gershkovitz that he was not eligible for reinstatement to his job due to serious strike misconduct.

Additional changes which occurred after the strike began include closing down what remained of the showroom and having customer service take the telephone calls from the "will call" customers and the people in the warehouse picked the order. Lentz testified that Noblit expanded the number of telemarketing phone lines to seven, with the lines going directly to answering machines which the customer use to place an order; that people in sales or customer service then transcribe the order from the machines; and that Noblit has one person designated to handle the will calls.¹²²

Gertner testified that during a recess of the trial herein Terry Smith followed him to a shopping center on his, Gertner's, way home; and that Smith lives in Bucks County and would also go in the same direction as Gertner on Interstate 95. Smith testified that enroute to picking up his wife he stopped in a gas station and saw Gertner in a shopping center; that he never threatened to kill Gertner or "kick his ass."

At the behest of Respondent and over the objections of General Counsel and the Union the record herein was reopened by my order dated October 31, 1986, to allow Respondent to introduce what are described as offers of reinstatement and the rejections of the offers. It is the Respondent's position that the documents, when considered in conjunction with record evidence that "the Union refused to agree at the bargaining table to return at the wage rates then paid the replacements clearly demonstrates that the offer to return was a sham."

At the reopened hearing Lentz testified that when the switchboard operator Suida advised him that she was leaving he wrote to Hepworth on August 29, 1986, and September 8, 1986 (R. Exhs. 249 and 250, respectively) offering her the job at the rate of pay Respondent were paying Suida, namely \$8.35 an hour; that by letter dated September 9, 1986 (R. Exh. 251), Hepworth responded as follows:

I am in receipt of your letter of August 29, 1986 offering to me a position as a Switchboard Operator at Noblit Brothers, Inc. Since the offer is improper, however, I must decline.

You indicate in your letter that the pay rate for the position is \$8.35 per hour and that some form of hospitalization and group insurance benefits are provided. The letter does not indicate what, if any, other benefits are provided, such as holidays, vacation, maternity leave, pension, etc. In addition, the letter does not indicate whether any of the terms and conditions in effect under the expired agreement with Teamsters Local 115 remain in effect.

As an unfair labor practice striker, I believe that I am entitled to the wages and other terms and conditions

¹²⁰ Lentz testified that the assets of AMA were sold the last week of November 1985; and that before the strike AMA had about 35 bargaining unit employees with between 7/10 on layoff.

¹²¹ U. Exh. 17 is the Notice of Determination by the Pennsylvania Department of Labor and Industry Office of Employment Security.

¹²² Replacement switchboard operator Suida testified that about three or four times a day someone would come to pickup an order; and that when the customer came in for an order she would call someone from the warehouse and they would get it and bring it to "the front."

that were in effect under the collective bargaining agreement with Lccal 115. Since the wages and other benefits you have offered are substantially below those set forth in the collective bargaining agreement, I believe that your offer is not a proper one [:]

that he subsequently forwarded a letter to Hepworth on September 12, 1986 (R. Exh. 252), answering some of the questions she had raised in her letter of September 9, 1986; that he did not receive a response from Hepworth to the above-described September 12, 1986 letter; that he then wrote letters to all the relief operators offering them¹²³ the position at the same pay;¹²⁴ that each one declined the offer in a separate letter;¹²⁵ that on September 16, 1986, he wrote to members of the bargaining unit about a possible opening in a janitorial position¹²⁶ because "we had a disciplinary problem with the existing janitor and we felt he might have to be replaced";¹²⁷ that each of the recipients of this letter wrote

¹²³ Lentz indicated in the letters that if more than one person accepted the position would go to the most qualified individual.

¹²⁴ Shields, Albertson, Dominguez, Susan McDonald, Rosemary Murphy, Vivian Russikoff, Susanna Petrella, Roseanne Rafferty, Jane Scanlon, Theresa Boyle, R. Exhs. 253 and 254, 256 and 257, 259 and 260, 262 and 263, 265, 267, 269, 271, 273, and 275, respectively. Some of the recipients of this letter did not have experience on the switchboard. Since they held more difficult jobs, Lentz testified, he believed that they could handle the job.

¹²⁵ R. Exhs. 255, 258, 261, 264, 266, 268, 270, 272, 274, and 276, respectively. The body of the first four of the above-described letters declining the offer reads the same as Hepworth's above-described September 9, 1986 letter. Beginning with the fifth above-described letter declining the offer, the body of the remainder (except for the date specified in the first paragraph) read substantively as follows:

I am in receipt of your letter of September 17, 1986 offering me a position as a Switchboard Operator at Noblit Brothers, Inc. Since the offer is improper, however, I must decline.

You indicate in your letter that the pay rate for the position is \$8.35 per hour plus the fringe benefits that you outlined in your letter. You further indicate that other benefits previously offered under the collective bargaining agreement with Local 115 are no longer being offered, and in fact, none of the terms and conditions of the expired agreement have remained in effect.

The law has accorded me certain rights as an unfair labor practice striker who has made an unconditional offer to return to work. Therefore, I believe that I am entitled to an offer of reinstatement that is substantially equivalent to the wages, benefits, and other terms and conditions that were in effect under the collective bargaining agreement with Local 115. Since the wages and other benefits are substantially below those set forth in the collective bargaining agreement, I believe that your offer is not a proper one.

Subsequent letters modified the last sentence of the letter with "and because the job you have offered to me is not substantially equivalent to my former position as a Computer Operator—Customer Credit" or "Customer Billing" or "Order Processor" depending on the position the employee held before the strike.

¹²⁶ William Domaradski, Jr., Tollefsen, Rosato, Joseph Adams, Raymond Bartholomew, George Boruch, Joslyn Dean, Ernest Dickens, Thomas Green, George Harris, Andrew Jahas, John Krzywicki, Lazarus, Alford Mazer, John Munford, Ben Sandler, Denis Stasen, and Burton Moore, R. Exhs. 277, 279, 281, 283, 285, 287, 289, 291, 295, 297, 299, 301, 303, 305, 307, 309, and 311. Other than Domaradski none of the recipients of this letter had previously performed janitorial work at Respondent.

¹²⁷ The involved janitor, Matt Williams, was never fired and there were no warnings or notations of disciplinary action in his personnel

back declining what each characterized as an improper offer;¹²⁸ that a forklift operator position opened up when Respondent had to terminate an employee who was a forklift operator; that he sent out letters dated September 24, 1986, to individuals who had previously been in the receiving department;¹²⁹ and that each of the recipients of these letters wrote back declining what each characterized as an improper offer.¹³⁰

B. Analysis

As noted above, the complaint alleges that Respondent unlawfully transferred the work of taking telephone orders and answering certain customer inquiries regarding the status of orders and billing from unit members to unrepresented employees, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain with respect to such acts and conduct and the effects of such acts and conduct.

General Counsel, on brief, argues that Respondent instituted numerous changes in its operations which resulted in a significant loss of unit work; that Respondent failed to notify the Union that it was transferring telephone sales, which accounted for about 60 percent of the show room employees work, out of the showroom; that transferring the telephone sales from the showroom did not turn upon a fundamental change in the nature and direction of Respondent's business since it still sells to customers directly from its facility; that while WMOs, which at one time accounted for 20 to 25 percent of the 10–15 unit clericals' workday, had decreased since the first few months of 1985, they completely dried up when during the summer of 1985 Respondent trained its "customer service/telemarketers" to research WMO calls on the computer terminals in their cubicals while they had customers on the phone; that the new customer service-telemarketers were not even aware that unit clericals had previously researched WMO calls, and the former asked the latter where to locate needed information; that while the unit clericals were able to fill the time they usually spent on WMOs with cross-training and cleaning customer files, such tasks would eventually end and layoffs, would no doubt re-

file. Lentz testified that Williams had an attendance problem. The first paragraph of the body of Respondent's letter reads "We may soon have an opening for the position of janitor. The position pays \$7.50 per hour plus fringe benefits as outlined below."

¹²⁸ R. Exhs. 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, and 312. In each of the letters, the employees take the same position as taken in the letter described above with some modifications to speak to the question of whether the position is substantially equivalent to specified positions, i.e., showroom salesmen or to speak to specific circumstances, i.e., the fact that Stasen was under a doctor's care, still receiving workers' compensation and was not able to resume employment at that time.

¹²⁹ Ben Sandler, Dean, and Moore. R. Exhs. 313, 315, and 317, respectively. The first paragraph of the body of the letters reads: "We have an opening for that position of Receiver/Fork Lift Operator. The position pays \$9 per hour plus fringe benefits as outlined below." The last sentence of the second paragraph of the letters states "if I do not hear from you by . . . September 26, 1986, I will assume that you are not interested in the position."

¹³⁰ R. Exhs. 314, 316, and 318, respectively. The letters read basically the same as the other registered letters as set forth supra, with obvious changes regarding the position and rate of pay. Also, each of the letters indicates that Respondent's requirement that the employee respond within 1 day is unreasonable.

sult; that even if the customer service representatives started using a computer in December 1989 to research WMOs, the WMO sheets continued to be posted for union clerical research through March 1985, and when the unit clericals noticed that the decrease was not merely temporary they complained to the Union and Respondent's management; that Section 10(b) of the Act does not begin to run until the aggrieved party is put on clear and unequivocal notice; that here there was a continuing unfair labor practice because despite the repeated requests through the spring and summer of 1985 to return the unit work, Respondent continued to transfer more and more unit work to its unrepresented employees; that the unit billing clerk employees lost work because during the summer of 1985 Respondent made unilateral changes, namely, new "customer service/telemarketers" bypassed the billing clerks and either transferred billing problem calls directly to Zimmerman or left messages regarding these calls in his bin, and installed five 800 lines three of which bypassed the switchboard and resulted in Zimmerman receiving billing problem calls instead of the billing clerk; that the billing clerks cross training and make-work project of cleaning out customer files would have ended at some point and layoffs would have occurred; that Michael Seidelman's meeting with and letter to Union officials regarding the reduction of the showroom did not result in a waiver of the Union's right to bargain about the elimination of unit work because it had no real notice that such action by Respondent was imminent; that once the Union became aware of the unilateral transfer of bargaining unit work it protested and demanded without success both before and during collective-bargaining negotiations that the work be returned to the unit; that, as Sheahan testified, at the strike vote meeting on August 30 Morris told employees:

They got these people that they call this telemarketing operation doing the work of Local 115. As you know, they have been taking this work away in bits and pieces all summer, and now they are in a position that this is going to be a permanent arrangement from their viewpoint and they are not even going to negotiate with us on that point, and it is our judgment that not negotiating with us on that bargaining unit work is an unfair labor practice on their part and we are going to file charges, and we are going to have an unfair labor practice strike.¹³¹

The Board has held (a) that if an employer's unfair labor practice causes or prolongs a strike, the strike is an unfair labor practice strike even though other issues may be involved, and (b) the employer's unlawful conduct need only play a part in the employees' decision to strike or continue to strike for the strike to be considered an unfair labor practice strike; and that while the employees and the Union were concerned about Respondent's contract language and economic proposals, a significant factor in the decision to strike was Respondent's unilateral transfer of bargaining unit work to unrepresented employees.

On brief, the Union contends that Respondent demonstrated union animus with the surreptitious nature of its unilateral changes considered in the light of its hiring a secu-

rity firm and seeking replacements before the expiration of the contract and, therefore, it cannot rely on the defense of *First National Maintenance Corp. v. NLRB*, 452 U.S. 667 (1981); that consequently this case does not involve merely a question of whether the decision to resume bargaining unit work was solely a managerial decision; and that if the Respondent's failure to discuss the telemarketing issue or the unilateral changes and their impact on the bargaining unit are determined to be unfair labor practices within the meaning of the Act it should necessarily follow that the resulting strike commencing on September 4 is deemed to be an unfair labor practice strike from the beginning.

Respondent, on brief, contends that it did not engage in any unfair labor practices prior to the commencement of the strike; that Noblit had no duty to bargain over the alleged changes because the de minimis changes had no demonstrable adverse effect on the bargaining unit employees and they were not motivated by labor costs; that customer service representatives began using the computer to perform WMO inquiries in December 1984¹³² and even before that they often did their own WMO searches; that the firing of Eckstein and the reduction in the amount of time it took to ship merchandise caused the additional decline in WMOs and the decline was totally unrelated to the hiring of the telemarketers; that the claim of Albertson and Tumolo that they received 40 to 50 calls a day dealing with customer inquiries regarding billing is belied by the telephone logs (G.C. Exh. 72), which show that for the first 4 months of 1985 they handled only a few calls a day, generally averaging around five each; that the installation of the toll free lines had absolutely nothing to do with saving labor costs but rather was motivated solely by a desire to generate more sales; that

the discontinuance of incoming sales calls to the showroom was a foreseeable outgrowth of the basic underlying change of reducing the showroom to a pick-up counter. Since Noblit had sought and obtained the Union's consent before reducing the showroom to a pick-up counter, there is no basis for complaining that the foreseeable consequences of such agreed upon changes were unlawfully implemented unilaterally;¹³³

that the discontinuance of the incoming sales calls to the showroom did not contribute in any way to Tollevson's lay-off but rather it was the shrinking of the showroom that caused his transfer to the warehouse and the slowdown in the warehouse that caused his layoff;¹³⁴ that there was no duty to bargain over the discontinuance of telephone sales calls to the showroom since this function always rested primarily with the customer service representatives; that the burden is

¹³² Respondent argues that its decision to utilize a computer falls within the scope of nonmandatory decisions established in *Otis Elevator Co.*, 269 NLRB 891 (1984), which, as pertinent, spoke to labor-saving machinery. Also, Respondent argues that since the charge was not filed till September 10, under Sec. 10(b) this part of the complaint is barred to the extent it seeks to remedy any alleged unfair labor practices occurring prior to March 10.

¹³³ R. Br., p. 44.

¹³⁴ In the alternative Respondent argues that if this was a unilateral change it had nothing to do with labor costs and under *Otis*, supra, a decision to change methods of sales is not a mandatory bargaining subject.

¹³¹ G.C. Br. p. 44. It is pointed out by General Counsel that the Union filed the charge on September 10. G.C. Exh. 1.

on General Counsel to place evidence in the record of a causal link between the strike and the alleged unfair labor practices in order to establish that the strike was an unfair labor practice strike; that the reference in the picket signs to alleged unfair labor practices occurred only some time after the strike began and, therefore, the allegation of an unfair labor practice strike was an afterthought; that the Union wanted to obtain for laid-off AMA employees an opportunity to work in Respondent's only area of expansion—telemarketing; that the Union waived the right to bargain over the loss of telephone orders and billing complaint work by failing to make a timely demand for bargaining; and that instead the Union demanded that Respondent disregard the will of the telemarketers themselves, whom the Union had been unable to enlist into the Union, and force them into the bargaining unit without even any election.

The showroom was once reduced in size long before Meidar purchased Respondent and that reduction did not result in any unit member being adversely affected. Contrary to Respondent's assertions, Michael Seidelman did not put the Union on notice in April 1985 regarding the extent of its most recent actions with respect to the showroom. And its argument that the Union should have anticipated the outcome begs the question.

An employer violates Section 8(a)(5) of the Act when, absent waiver by the appropriate bargaining agent of its employees, it takes unilateral action with respect to matters which affect its employees' terms and conditions of employment which are mandatory subjects of bargaining, without allowing the bargaining agent a meaningful opportunity to bargain about the change or alteration. *Armour Oil Co.*, 253 NLRB 1104, 1119 (1981).

Was the transferring of the telephone orders previously handled by the showroom a mandatory subject of bargaining? Before the involved reduction, Noblit, with its showroom, competed with its own local retail hardware customers. Inventory was displayed for the customer to see. Someone could walk into the showroom and purchase the products Respondent sold. The showroom personnel were there to service the walk-in and will-call customers. Show room employees, along with customer service representatives, also handled telephone orders. There is conflicting evidence with respect to the importance of taking telephone orders by show room employees vis a vis their waiting on customers who were in the showroom. The evidence shows that when there were a lot of people in the showroom a light would be turned on which signaled the switchboard operator not to send anymore telephone order calls to the showroom. On the other hand, management witnesses testified about irate customers complaining about having to wait to be helped while showroom personnel took telephone orders. Documentary evidence demonstrates that showroom personnel were expected to take telephone orders and they were expected to handle both the telephone orders (if necessary just answering the phone getting a name and number so as to be able to call back later) and the customers in the showroom. Only when it became impossible to perform both of these functions was the "eternal" light turned on.

But while taking telephone orders was an important part of the show room employees' job, this function was shared with customer service representatives. Indeed there is testimony and documentary evidence that fielding such calls was

the primary responsibility of customer service representatives.¹³⁵

After Meidar purchased Respondent a decision was made to deemphasize Respondent's retail showroom. Will-call customers were required to call in their orders 24 hours in advance of pickup. The size of the showroom was reduced so that inventory was no longer displayed as it had been in the past. As Michael Seidelman indicated in his April 9 letter to Morris, what was a showroom would become a "pickup type of showroom counter on a wholesale level." In other words, the nature of this aspect of Respondent's operation changed. With this change there was noneed for four employees. Indeed there wasn't sufficient space in the pickup area for four employees. Two were sent to work in the warehouse. These two transfers were the result of a change in the nature and size of this aspect of Respondent's operation. While the Union was put on notice about the change it was not notified that the change would result in one employee being transferred and another eventually being laid off. Also, the Union was not notified that the telephone orders would be transferred to customer service representatives/telemarketers. As noted above, however, Respondent argues that Tollevson's layoffs in no way was the result of the transfer of telephone orders; that this transfer was foreseeable consequence of reducing the showroom to a pickup counter; and that the Union consented to the reduction. While it might be stretching it to say the Union consented, the Union was placed on notice that there would be a change in the nature of this aspect of Respondent's operation. The Union did nothing regarding this matter. As asserted by Respondent's witnesses the eventual discontinuance of sales calls to the showroom had nothing to do with labor costs. The discontinuance of these sales calls was not a mandatory subject of bargaining within the meaning of *Otis Elevator Co.*, supra, in that that case specifically excluded from Section 8(d) of the Act those of management's decisions which deal with changes in the method of sales.¹³⁶

It is argued by the Union that the record demonstrates union animus on the part of Respondent. Contrary to Respondent's contention on brief, Dominiquez did testify that she told someone of the conversation she allegedly heard between Meidar and Michael Seidelman. But the person she allegedly told, Sheahan, never corroborated this at the trial herein notwithstanding the fact that he did testify that when union representatives were first introduced to Meidar he said "[i]t's always wise to know your enemy." If she had relayed what she allegedly overheard to Sheahan it is hard to believe that neither he nor someone else on the Union's negotiating team would not have reiterated these remarks during negotiations. It is my opinion that when all that occurred is considered, Meidar did not make these remarks. And the Union's assertion that Respondent's hiring a security firm and seeking replacements before the contract expired when consid-

¹³⁵ Gershkovitz' testimony that he saw R. Exh. 235, the mailer directing customers to place orders by phone with the customer service department, before the trial herein, negates any hint that this may have been fabricated for the trial.

¹³⁶ Sec. 8(d) defines the duty to bargain as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment" Sec. 29 U.S.C. § 158(d).

ered in conjunction with the alleged unilateral changes amounts to antiunion animus has no merit. The Union made it very clear, in advance of the expiration of the contract, that a strike was a distinct possibility. In these circumstances, any employer which wanted to continue operating with the real threat of a strike hanging over its head would have taken those measures which would be necessary to assure continued operations. Taking those measures in these circumstances does not warrant a finding of antiunion animus. The Union's claim of antiunion animus has no merit.

In view of the fact that the change in the nature of the showroom and the resulting transfer of telephone orders did not turn on labor costs and since the Union did not at any time request to bargain over the effects of these changes, it is my opinion that it cannot be found that Respondent has violated any duty to bargain about the effects of its decision regarding the showroom. As noted above, the showroom was reduced in size once before without any effect on its nature. Here, however, the Union was placed on notice that the nature of this aspect of Respondent's operation was going to change. Notwithstanding this, the Union sat on whatever rights it may have believed it had. It cannot now successfully argue that Respondent violated a duty to bargain over the effects which could reasonably occur with this change.

The circumscribed role unit clericals played in handling WMOs became even more limited in December 1984 when customer service representatives began to use the computer terminal to research WMOs. Even before that some of the customer service representatives handled many WMOs without any help from unit clericals.¹³⁷ And after customer service representatives began to utilize the computer, one individual, Eckstein, accounted for most of the WMOs unit clericals researched. These were lost when he was fired in March 1985. WMOs further declined when Noblit drastically reduced the time it took to ship an order.¹³⁸ As noted, unit clericals handled this work in their spare time. It has not been demonstrated that Respondent acted for an antiunion reason or from a desire to modify or lower labor cost. There were no layoffs attributed to the decline in the number of WMOs handled by unit clericals and they sustained no perceptible loss of employment or earnings. Consequently, while the effect the change would have on the employees is a critical factor, here one is left to speculate, along with the General Counsel regarding a fear of future impairment of job opportunities. The court, in *Equitable Gas Co. v. NLRB*, 637 F.2d 980, 990 (3d Cir. 1981), stated:

Absent evidence to support a "demonstrable adverse impact on employees in the unit, *Westinghouse*, supra, 150 NLRB at 1577, we refuse to speculate about future impairment of work opportunity where the evidence does not support any such fact or conclusion." See *District 50, UMW*, supra.

Although we concede that the determination of what constitutes a "demonstrable adverse impact" may be

difficult to explain, we are satisfied that where findings, fully supported by the evidence, reveal that no layoffs have resulted from the subcontracting practice and no diminution of earnings or loss of job opportunities have occurred, it cannot be said that the impact upon the employees was demonstrably adverse.

Respondent argues that its decision to utilize a computer clearly falls within the scope of nonmandatory decisions established in *Otis Elevator Co.*, supra at 893 fn. 5, which involve a "decision . . . to invest in labor savings machinery." In the circumstances here present there was no duty to bargain over the change or over the effects regarding WMOs.

While some unit members complained about a reduction in the number of billing problems they handled after Meidar purchased Respondent, testimony and documentary evidence does not bear out their position regarding the magnitude of the reduction. The evidence does not establish that to the extent there was any reduction it was because nonunit employees were handling these problems. Nonunit employees continued to refer these problems to the appropriate department. General Counsel points out that a change occurred in that the calls and memoranda which used to go to individual unit members in the department, for the most part, went to the supervisor in the department, Zimmerman. Apparently the alleged change speaks to a reduction in the number and not to a total cessation for there is evidence of record that unit clericals continued to receive some of this type of work. The record does not demonstrate that anyone other than Zimmerman or the unit members handled these problems immediately before or after the Meidar purchase. Zimmerman always handled some of these problems. So if there was a reduction in the number of problems the unit members handled, it was because either there were fewer problems to handle or because Zimmerman decided to handle more of the problems himself.¹³⁹ As pointed out by Respondent on brief, before the strike, no one even registered any complaint regarding the alleged transfer of handling some of the customer inquiries about billing matters. It is not alleged that any of the billing clerks was in any way adversely affected by this alleged change. And again, (General Counsel's speculation is no more than just that. *Equitable Gas Co.*, supra. To the extent that Zimmerman may have reduced bargaining unit work by keeping more of this work for himself, the reduction was at most insignificant and apparently would be the result of the type of management decisions which *Otis Elevator Co.*, supra designates as not included in mandatory bargaining. Poststrike changes in the department may have been dictated by factors which were not present before the strike and, therefore, they are not determinative in resolving this issue.

Consequently since contrary to the allegations in paragraph 14 of the complaint there was no obligation to bargain, it obviously follows that contrary to the allegations in paragraph 17 of the complaint the above-described strike was not caused or prolonged by the above-described alleged changes.

¹³⁷ Since WMO forms were posted through March 1985 and Respondent has not shown that it gave notice in December 1984, its Sec. 10(b) of the Act statute-of-limitations argument must fail.

¹³⁸ While General Counsel points out on brief that Stojak testified that she researched four or five WMO calls a day in August before the strike, Stojak testified that a majority of those calls could be answered from the computer terminal.

¹³⁹ General Counsel argues that since three of the toll-free lines bypassed the switchboard operator, all billing calls which bypassed the switchboard operator would have been directed to Supervisor Zimmerman and not to billing clerks. These lines were installed apparently to save customers telephone charges and thereby increase sales. It was not demonstrated that they had anything to do with saving labor costs.

As asserted, in the latter paragraph, however, the strike was prolonged by the unfair labor practice in paragraph 10 of the complaint.

More specifically, as alleged in paragraph 10 of the complaint on September 26 Meidar unlawfully discharged Respondent's employees. In doing so he converted an economic strike into an unfair labor practice strike.

The conflicting versions of what was said when the Meidar car was about to cross the picket line on September 26 are not even close. One side fabricated a version right down to who sat where in the car. The testimony of Oliver, Hurvitz, and Rafferty is credited. On the one hand, as he himself demonstrated as at the trial herein, Meidar has a tendency to have inadvisable outbursts. This confrontation occurred just after Meidar had agreed to Police Captain Shanahan's terms, viz, not to attempt to take the replacement workers who were waiting outside the Girard Avenue police station to the plant. Also, as will be treated more fully infra, Meidar was not credible when testifying about certain matters herein. John Munro was not a credible witness. His assertion that the day before, September 25, he saw Nefferdorf take his, Munro's book during a confrontation was belied by a videotape (G.C. Exh. 100), showing him searching his own pockets for the book after the confrontation.¹⁴⁰ Nefferdorf was arrested based on Munro's assertion.¹⁴¹ Varela was not in the involved car on September 26.¹⁴² Varela never denied Creighton's allegation that 6 days before this incident he told her, after attempting to run her down, that "if you [Creighton] go to court and testify against me I'll come and get you" Varela is not the type of man one would want to rely on when searching for the truth. He impressed me as being the type of person one might turn to when something other than the truth was going to be advanced. On the other hand while Respondent's counsel was able to shake the testimony of Oliver utilizing an affidavit he gave to the Board on this matter, in my opinion, notwithstanding his equivocation with respect thereto, he testified credibly about what occurred on September 26. While it might be argued that Hurvitz and Rafferty had reasons to want to get back at Respondent¹⁴³ I do not believe that to be the case. Both, especially Rafferty, impressed me as giving credible testimony regarding what was said.

As noted in *Vulcan-Hart Corp.*, 262 NLRB 167, 168 (1982), an employer's discharge of striking employees is "a blow to the very heart of the collective bargaining process [and] leads inexorably to the prolongation of the dispute." The employees involved in the strike became unfair labor practice strikers on and after September 26.

Paragraph 11 of the complaint alleges that Gertner unlawfully discharged Hirschman and O'Farrell Jr. on September

27. General Counsel, on brief, contends that Gertner's version of what occurred on September 27, as set forth above, is internally inconsistent and totally incredible; and that these two employees were fired because on September 26 they signed union authorization cards and supported strikers on the picket line with their presence. The Union points out, on brief, that both of these employees were observed by supervisors signing authorization cards on September 26 and Gertner conceded that he saw them on the picket line that day; and that Gertner, with approximately 20 other employees absent the previous day, singled out these two employees for disparate treatment. The Respondent argues on brief that O'Farrell, Jr. was an admitted liar who obtained his position at Noblit under fake pretenses to be a spy for the Union; that Hirschman's testimony was "bought" by the Union in that it helped him obtain another job shortly after he left Noblit while not obtaining positions for its long-time members;¹⁴⁴ and that while Hirschman testified that he indicated on the application for the other job that he was terminated for strike disobedience the application indicates only "strike."

When O'Farrell took the job with Noblit it was not for the money. He was paid substantially less than his prior job and he accepted this at the outset because his primary purpose was not to make money but rather to be on the inside so he could assist the Union. Gertner's testimony that O'Farrell left in a huff over pay is not only unrealistic but it is absurd. Considered as a whole Gertner's testimony demonstrates just how far he would go in support of Respondent. In view of this, I cannot rely on Gertner's other testimony, unless it is corroborated by other reliable evidence. Both O'Farrell Jr. and Hirschman impressed me as being credible witnesses. The fact that the Union helped Hirschman get a job after he was fired does not demonstrate that the Union bought Hirschman's testimony. Rather it would seem to be merely a matter of Morris living up to his commitment to the replacement employees to find them another job if they left Noblit. The fact that a person is willing to engage in spying and takes those measures necessary to carry out his job does not itself mean that the person would subsequently, after the job is over, tell less than the truth while testifying under oath. As noted above, Hirschman impressed me as being a credible witness. When he testified herein on July 14, 1986, he stated that he *believed* that he noted on the application, dated September 30, for a janitor position with the University of Pennsylvania that he was fired by Noblit for strike disobedience. He was mistaken. This mistake does not undermine his credibility.

Paragraph 15 of the complaint alleges that on or about October 25 the Union, by letter, acting on behalf of Respondent Noblit-AMA's striking employees made unconditional offers to return to work. On brief General Counsel contends that when the offer to return is unconditional on its face, as this one was, it is the employer's burden of proof to show that the offer was other than unconditional; that Respondent's job "offers" were not valid offers of reinstatement to substantially equivalent positions of employment and, therefore, the striking employees were not obligated to accept them; that an offer to return to work at wages and benefits significantly

¹⁴⁰ A number of his other assertions regarding what transpired that day were also belied by the same videotape, i.e., that Lane was only defending himself against O'Farrell and that he, Munro, does not allow his guards to talk to the tickets.

¹⁴¹ As indicated above, the changes were subsequently dropped.

¹⁴² Notwithstanding the last sentence of fn. 83, supra, logic does not always prevail.

¹⁴³ As noted above the former was declared ineligible for reinstatement and the latter was allegedly subjected to severe sexual harassment (so severe that it caused her husband to come to Noblit to talk to one of the guards who allegedly engaged in the highly offensive conduct) on the part of John Munro and guards of the security firm utilized by Respondent.

¹⁴⁴ Respondent itself on brief points out that the videotape (G.C. Exh. 100) shows Morris on September 26 telling replacement employees "You come with us, we'll find you a good job."

lower than those enjoyed by the employees before the strike is not considered substantially equivalent; that while an employer may be free to set the wages and benefits of striker replacement employees, it is not free to unilaterally change the wages, benefits and other terms and conditions of employment of its striking employees without bargaining to impasse with the employees' collective-bargaining representative over those matters; that at the negotiating session on November 14, Respondent's counsel attempted to find out whether the Union thought the striking employees might return to work at the significantly lower wages and benefits then being paid the strike replacement employees and he was not actually making an offer of reinstatement; and that the "offers" made by Respondent to the strikers for jobs with significantly lower pay were invalid offers of reinstatement.¹⁴⁵ The Union, on brief, argues that the letters for an unconditional return to work and the Respondent's refusal are undisputed. And Respondent, on brief, contends that the Union cannot make an "unconditional" offer to return to work and concomitantly impose as a condition a wage increase higher than that previously put on the bargaining table; and that having exercised its lawful right to hire replacements at wages and benefits less than those previously paid the strikers under the old contract, and having bargained unsuccessfully with the Union after the strike began over the rate the Union would accept for returning strikers, Respondent was within its rights to offer the strikers the then prevailing wage and benefit rate.

As indicated by General Counsel Respondent has the burden of proving that a offer to return unconditional on its face is in fact conditional. Respondent has not met its burden of proof. Contrary to Respondent's aforementioned assertion, it has not been demonstrated that the Union conditioned its offer to return on receiving "a wage increase higher than that previously put on the bargaining table." And for the reasons given by General Counsel, a valid offer of reinstatement was never made by Respondent. Even if there was impasse when the strike began, Respondent could not make unilateral changes when the strikers offered to return to work, which changes were not reasonably comprehended within its pre-impasse proposals. *Taft Broadcasting Co.*, 163 NLRB 475 (1967); cf. *Capitol Hustings Co. v. NLRB*, 671 F.2d 237 (7th Cir. 1982). Consequently, Respondent has not shown that the Union's October 25 offer to return was conditional.

During the trial and on brief General Counsel takes the position that under *Bannon Mills*, 164 NLRB 611 (1964), and its progeny testimony regarding alleged serious strike mis-

conduct on the part of strikers should be stricken because Respondent failed to produce, pursuant to General Counsel's subpoena, a computer printout¹⁴⁶ with employee names, among others, which printout, as indicated above, contained checkmarks and from one to three words in the margin describing the alleged misconduct. General Counsel, on brief, argues that the list itself was the operative document; that Lentz relied on the list and its notations to decide which strikers to terminate; and that

[t]herefore, testimony concerning alleged misconduct by the strikers is less reliable than the list which Respondent failed to produce to show why Respondent chose to terminate these particular strikers.¹⁴⁷

Respondent, on brief, argues that after a good-faith search fails to locate and produce a document which is later discovered and then immediately produced, and there has been no prejudice to the General Counsel's case, *Bannon Mills*, sanctions are clearly inappropriate; that in view of *Peoples Transportation Service*, 276 NLRB 169 (1985), a two-pronged test was established, namely, was there a willful refusal to produce the documents earlier, and second there must be prejudice to the subpoenaing party; that General Counsel was not prejudiced because she was not required to produce any evidence during her case-in-chief rebutting Respondent's claim that these strikers had engaged in unprotected conduct; that General Counsel's attempt to exclude any and all testimony concerning the issues to which the later produced exhibit pertains goes well beyond *Bannon Mills*, supra; that it would be both ludicrous and against the interests of justice to propose that these independent sources of facts and evidence should be silenced because of Respondent's late production of the list; that the testimony of Respondent's witnesses constitutes independent sources of corroboration and is the basis for the information which appears on the list; and that because this testimony is also independently based on the facts and events which surround the creation of the list and are not based per se on the list itself, *Bannon Mills*, supra, exclusionary sanctions would be inappropriate.

General Counsel's position appears to be that Obergfell, who along with Gormley, had to go to the hospital after being assaulted on September 26 should not have been allowed to testify about the role Thomas Fisher played in the assault because Respondent initially did not turn over a computer printout with Fisher's name on it along with a checkmark next to his name and the words "THREATS & ASSAULTS." She takes this position notwithstanding the facts that both Obergfell and Fisher gave affidavits to the Board shortly after the incident, the Board on October 21, apparently after an investigation, issued a complaint in the above-described Case 4-CB-5114 (G.C. Exh. 1(k)), containing an allegation that Fisher and others on September 26 assaulted Gormley and Obergfell, and on December 2 Respondent's attorney forwarded a position statement to the Board which General Counsel introduced herein (G.C. Exh. 104), and which speaks to the above-described alleged assault and Obergfell's September 27 affidavit to the Board.

¹⁴⁵ Regarding the switchboard operator's position, it is pointed out that being told that one is in a pool of applicants is not a valid offer of reinstatement and that the position was not substantially equivalent to the position a number of the involved employees held just before the strike. With respect to the janitor position, General Counsel contends that Respondent was merely inquiring whether Domaradski would be interested in the janitor job if it opened up and in fact it was never vacated; that the "offer" of this job was invalid because it was made to a number of striking employees at the same time; and that the other employees who received this "offer" before the strike held higher paying jobs which were not substantially equivalent to the janitor job. Regarding the receiving/forklift operator job, General Counsel contends that since Respondent gave specified employees only one day to respond to its "offer," said "offer" was invalid. Also, assertedly the offer was invalid because it was made to three strikers simultaneously.

¹⁴⁶ As noted above, R. Exh. 193 was not received and it was placed in the rejected exhibit file.

¹⁴⁷ G.C. Br., p. 13.

The outcome is already evident from the summarization above of the challenged evidence. While I had no problem with excluding the list and the secondary evidence dealing directly with the content of the list, obviously I have a problem with General Counsel's motion to strike the independent testimony which speaks to the incidents themselves. Regarding the list, what purports to be the list was produced only after a witness of Respondent, Griffiths, testified about its existence. The circumstances surrounding a list's existence and the production of a list were such that there was little choice but to exclude it and testimony with respect thereto. In my opinion that does not mean, however, in circumstances such as exist here that evidence wholly independent of the list, evidence on questions of serious strike misconduct, should also be excluded. Consequently, General Counsel's numerous motions to strike such evidence, which rulings were deferred during the trial, are denied.¹⁴⁸

Paragraph 11(b) of the complaint alleges that on November 5 Respondent discharged specified employees. As pointed out by the Board in *Gem Urethane Corp.*, 284 NLRB 1349, 1352, 1353 (1987):

It is well settled . . . that strikers who have committed serious acts of misconduct are not entitled to be reinstated. If an employer raises such a ground for refusing reinstatement, the employer must show that it had an honest belief that the employee it refused to reinstate was guilty of strike misconduct of a serious nature. If the employer establishes such a showing, then the General Counsel must come forward with evidence that either the employee did not engage in the alleged misconduct or that the conduct was not sufficiently serious to preclude reinstatement. "At all times, the burden of proving discrimination is that of the General Counsel."

. . . .

The Board . . . [in] *Clear Pine Mouldings*, 268 NLRB 1044 (1984) . . . adopted the objective test formulated by the Court of Appeals for the third Circuit.¹⁸ There the court stated that an employer need not "countenance conduct that amounts to intimidation and threats of bodily harm" and that in determining whether verbal threats by strikers directed at fellow employees justify an employer's refusal to reinstate, the criterion is "whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act."¹⁹

¹⁸ *NLRB v. W. C. McQuaide, Inc.*, 552 F.2d 519 (1977).

¹⁹ Id. at 528 (quoting *Operating Engineers Local 542 v. NLRB*, 328 F.2d 850, 852-853 (3d Cir. 1964), cert. denied 379 U.S. 826).

On brief General Counsel contends correctly that she has made a prima facie showing, namely, that there was a strike;¹⁴⁹ that there was an unconditional offer to return to

¹⁴⁸ General Counsel's renewed motion to strike the switchboard operator telephone logs is denied. The circumstances surrounding the tardy production of the logs differ from those surrounding the list.

¹⁴⁹ On brief and in its answer to the complaint Respondent argues that the Union called an illegal strike after it bargained to impasse over a nonmandatory subject of bargaining. It appears from the

work; and that Respondent notified certain employees that they were ineligible for reinstatement;¹⁵⁰ that Respondent's actions in this regard were based on antiunion motivation since it (1) solicited reports of alleged acts of misconduct by strikers, (2) failed to fully investigate alleged acts of misconduct by the strike replacement employees, and (3) waited months after notice of the alleged incidents to terminate the strikers; that apparently Respondent decided to terminate these strikers only after they unconditionally offered to return to work and Respondent began to incur possible backpay liability; that Respondent's delay in acting also suggests that the incidents did not occur, or were not substantiated or were not considered sufficiently serious by Respondent at the time to warrant immediate discharge; and that Respondent violated Section 8(a)(1) and (3) of the Act.

The discharged employees will be treated in the order they are set forth in the complaint. As noted above, it is alleged that the first, Anderson, engaged in four acts of serious misconduct. Obergfell and Stojak are credited.¹⁵¹ Anderson expected on both of these individuals and she shook her fist and attempted to goad the latter into a physical confrontation. The fact that there were police officers nearby has been considered along with the fact that police officers were present at other times when misconduct occurred and they did not always take any action. While the allegation that Anderson hit Griffith's car at the picket line with her, Anderson's, hand, does not seem that serious, especially when viewed in light of the fact that it was common practice for a picketer to tap a nonstriker's car to signal them that they could cross the picket line, Anderson denies that this ever occurred. Anderson is not credited. Also, Anderson is not credited regarding her denial as to what she told the Pflaumers when she saw them getting into their car near the dropoff point.¹⁵² But, as Anderson pointed out, undoubtedly she already knew what the car looked like and it was not demonstrated that Anderson in any way participated in subsequently damaging the car. Under *Clear Pine Mouldings*, supra, however, Anderson's intimidation of Stojak was sufficient justification for Respondent's refusal to reinstate her. And as noted above, the Stojak incident was not the only spitting incident involving Anderson.

Since Childs did not testify herein, the testimony of Lentz and Fontanes stands un rebutted. It was not demonstrated, however, that there was any connection between what Childs said to Lentz and the damage his car suffered. In my opinion (1) neither of these men would have been intimidated solely by what Childs, a middle-aged woman, said to them, and (2) these incidents taken, individually, or collectively, are insufficient to establish a basis for denying Childs her reinstatement rights.

There are a number of problems regarding Respondent's allegation of misconduct on the part of Costigan. Documents

record that union representatives believed that job security of unit members was threatened and that the only defense was to seek to have telemarketers included on the unit. The strike was not illegal.

¹⁵⁰ General Counsel, in fn. 39 of her brief, points out that while Nash was unlawfully discharged, along with others, on September 26, Respondent's obligation to reinstate Nash with backpay was cut off on or about November 8 when Respondent lawfully notified him that he was ineligible for reinstatement. Since it has not been demonstrated that there was a position for Nash between October 25 and November 8, this matter will not be treated further.

¹⁵¹ Along with corroborating witness Dennis Seidelman.

¹⁵² Floyd did not actually corroborate Anderson's denial.

signed by Lentz on November 5 conflict regarding whether Costigan was ineligible for reinstatement. When he testified herein Lentz could not recall why Costigan was ineligible for reinstatement. Meidar's testimony about the antisemitic statements allegedly made by Costigan is not corroborated. It appears that Meidar did not usually drive his own car across the picket line and, therefore, there would have been someone else in the car. Meidar did not impress me as being a credible witness. He contradicted himself at times (see his above-described testimony regarding whether the Union demanded the return of the WMO work) and even attempted at one point to preclude further cross-examination regarding Tumolo's alleged antisemitic statements by, without justification, initially refusing to answer. Costigan's denial is credited. Respondent has not shown that it had a sufficient basis for denying Costigan reinstatement.

The fact that slushy ice from Creighton's cup hit the windshield of a Boyd van, in the circumstances present here, did not provide a sufficient basis for denying Creighton reinstatement. Varela, the van's driver, did not testify herein about this incident. Credible evidence of record demonstrates that he was not driving carefully that day, even taking into consideration the hostile environment. Griffiths' testimony that Creighton looked startled and would have been hit if she did not keep running supports Creighton's testimony that the slush flying from the cup was involuntary as she tried to avoid being hit by Varela. Creighton's testimony about this incident is credited. Varela did not deny that he threatened Creighton later that day saying "if you go to court and testify against me, I'll come get you." Lichtenfield testified about an alleged incident involving Creighton but he did not tell anyone in management or management's law firm until 1 week before he testified herein on May 9, 1986.¹⁵³ He was not in the car allegedly involved in the incident. He was in another car which was stopped on the driver's side of Haldis' car while the alleged tire kicking allegedly occurred on the passenger side of Haldis' car. Other alleged conduct could have been consistent with the above-described practice of picketers tapping nonstrikers cars when they could cross the picket line. Creighton denied this occurrence. When he testified herein Lentz did not cite this as a reason for sending Creighton her discharge letter. Without more, it cannot be concluded that Creighton's conduct reasonably tended to coerce or intimidate employees in the exercise of protected rights under the Act. Respondent has not shown a sufficient basis for refusing Creighton reinstatement.

On brief Respondent contends that Hurvitz¹⁵⁴ was declared ineligible for reinstatement because she told Scotkin "Don't sleep lightly tonight, sucker" and that night the tires on Scotkin's van were slashed. Hurvitz denied making the statement, no evidence was produced that Hurvitz had anything to do with the tire slashing, and Scotkin's credibility was adversely affected by, among other things,¹⁵⁵ his chang-

ing testimony regarding whether or not he submitted written statements regarding alleged picket line misconduct. In these circumstances I do not believe that Respondent had a sufficient reason for finding Hurvitz ineligible for reinstatement.¹⁵⁶

Respondent, on brief, contends that Lupton's denial that she punched John Munro in the face should not be credited in view of the fact that her denial that she said anything to the replacements that morning is incredible and in view of the fact that her claim that she was knocked down during the September 25 confrontation is not supported by the videotape of the incident (G.C. Exh. 100). General Counsel contends that it is very likely that Lupton who is a large woman weighing 380 pounds and who has "bad" knees would have gotten knocked down in the fracas and thereby immobilized; that it was not demonstrated that Munro, who holds a black belt and competes in karate and who was kicking Nefferdorf who was on the ground (Nefferdorf testified that he was held on the ground by another man while Munro kicked him), was injured; and that even if Munro did get hit, it may have been accidental or a minor contact not warranting the extreme action of terminating Lupton. The videotape does not show Lupton on the ground. Nonetheless, I cannot credit Munro. His testimony is not corroborated. After reviewing the record evidence I must conclude that John Munro is not the type of man I would want to rely on in searching for the truth. This was the same confrontation where Munro had Nefferdorf arrestedly for taking his, Munro's book and a check during the confrontation, notwithstanding the fact that the video shows Munro searching his pockets after the confrontation. Other reasons for finding John Munro an incredible witness are set forth above. Perhaps there was some contact. It could have been accidental in this kind of scuffle. The videotape shows that Munro himself apparently was accidentally knocked to the pavement earlier when a man wearing a blue uniform backed into him for some reason. Before and as Lane went after Farrell there was a lot of pushing and shoving. I cannot credit Munro's testimony that Lupton punched him. Respondent has failed to establish a sufficient basis for terminating striking shop steward Lupton.

The only witness who gave testimony allegedly supporting Robinson's discharge is Gertner. Lentz could not recall why he sent the ineligible for reinstatement letter to Robinson. Robinson denied Gertner's allegation. As noted above, Gertner was an incredible witness. Robinson's denial is credited. Respondent did not demonstrate that it had sufficient justification for finding Robinson ineligible for reinstatement.

Two of Respondent's witnesses gave testimony allegedly supporting the discharge of Sharp. One, Covey, testified that Sharp was in a crowd which advanced toward him on September 26 at the pickup point; that Sharp had a stick which was about 3 feet long; that he heard the leader of the crowd

¹⁵³ Respondent's aforementioned position statement, G.C. Exh. 104, dated December 7, 1985, does refer to an alleged incident involving Creighton kicking a car driven by Haldis. According to the statement "several other Noblit employee" were in the car with Haldis. Neither he nor the others in the car testified about this alleged incident.

¹⁵⁴ As noted above Respondent withdrew its ineligibility letter regarding Hepworth at the trial herein.

¹⁵⁵ His credibility will be treated further infra.

¹⁵⁶ Respondent does not, on brief, refer to Feder's allegation that Hurvitz and Wall, in harmony, told Feder "You are going to lose your condo, your Mercedes and your husband." Both deny the allegation. Even if Eeder is credited, such a statement would not be sufficient justification for declaring Hurvitz ineligible for reinstatement.

say, "There they are!"¹⁵⁷ while he, Covey, was sitting in a car with the windows up and the individual saying this was about 250 feet away; and that he then left the scene. The other, Gormley, testified that while crossing the picket line Sharp said to him, "We will get your other eye." Sharp concedes he was at the Girard Avenue police station on September 26. Otherwise he denies both allegations. Initially Lentz could not recall why he discharged Sharp. Subsequently Lentz testified that in a letter to the Office of Employment Security dated November 5, 1986, he indicated that Sharp made threats on the safety and well being of management personnel at various times during the strike. Yet Respondent's statement of position (G.C. Exh. 104) as here pertinent, cites only the former above-described incident.¹⁵⁸ As pointed out by General Counsel, Covey's testimony that while sitting in a car with the windows closed he could hear what someone said 250 feet away is incredible. Sharp's denial regarding this incident is credited. Gormley testified that he put a checkmark next to Sharp's name on the employee list (Gormley described it as "the list of strikers.") As noted above, the employee list (R. Exh. 193) was placed in the rejected exhibit file. Interestingly there is only one checkmark next to Sharp's name. And the note in the margin is "ABUSE OF EMPLOYEE."¹⁵⁹ It appears that this note refers to the alleged Sidowski incident. If someone placed a checkmark next to Sharp's name for that incident then there would be two checkmarks on the list if Gormley did in fact place a checkmark on Respondent's Exhibit 193, which purports to be the list in question. It might be argued that Gormley did place a checkmark on the list but Lentz wrote about the other alleged incident in the margin.¹⁶⁰ As set forth above, Gormley's testimony was very vague regarding who he told and when he told them about this alleged incident which was not included in the December 2 Respondent's position statement (G.C. Exh. 104). At a minimum it would appear, therefore, that Respondent was not relying on it when it discharged Sharp on November 5. Sharp's denial is credited. All things considered, Respondent has not demonstrated that it had sufficient justification on November 5 for declaring Sharp ineligible for reinstatement.

Tumolo was declared ineligible for reinstatement because, according to Meidar's testimony alone, she made antisemitic remarks to him. Tumolo denied this conceding only that she told Mediar to go back to Israel. Tumolo explained that if Meidar was from Ireland she would have told him to go back there; and that the remark was not meant to be antisemitic. On brief, General Counsel contends that the "Go back to Israel" remark made to a foreign-born employer, in the heat of a difficult and long strike is mere rhetoric and not egregious enough to warrant Tumolo's discharge. As General Counsel contends, Meidar was not a credible witness.

¹⁵⁷ While there was other testimony about what this crowd allegedly did, Sharp was not specifically identified as participating in those subsequent events.

¹⁵⁸ An alleged incident involving nonstriking employee Sadowski is also listed in the position statement but he did not testify herein and therefore that hearsay will not be given any weight.

¹⁵⁹ The last letter in the word "EMPLOYEE" is not that legible.

¹⁶⁰ As noted above, it appears at a minimum that one writing instrument was used to make all the checkmarks and that perhaps only one person made all the checkmarks. Although treated above, what R. Exh. 193 does or does not show is not determinative herein.

Tumolo is credited. Her above-described remark was not sufficient justification for declaring her ineligible for reinstatement.

Allegedly Wall was declared ineligible for the threat on the well being of Dorothy Pflaumer's grandson. On brief, General Counsel contends that even assumign arguendo that Wall made such a statement about the 12-year old child, the child did not attend the school allegedly identified by Wall and such an idle comment would not rise to the level of a coercive threat sufficient to warrant Wall's termination. I must disagree. If Wall made such a threat, it would go well beyond the bounds of what is permissible conduct. While Dorothy Pflaumer was less than candid many times while testifying herein, it is not necessary to rely solely on her testimony. Regina Pflaumer also testified about the threat. The Pflaumers are credited. Wall was not truthful in her testimony regarding this matter. Respondent had sufficient justification for declaring Wall ineligible for reinstatement.¹⁶¹

On brief, Respondent cites two incidents which it contends justify declaring Nefferdorf ineligible for reinstatement. Taking the second cited incident first, namely, John Munro's assertion that Nefferdorf stole Munro's pocket notebook and a check, as noted above the evidence of record does not support Munro's assertion. Not only wasn't John Munro a credible witness, he was unable to accept the obvious when it conflicted with the position he was advancing. The first cited incident involves Gertner's allegation that Nefferdorf, among others, participated in the alleged assault on Noblit's truck, which was occupied by Gertner and two other men, on a side street in Philadelphia and at the Consolidated Freightways terminal. Gertner was the only witness to identify the picketers allegedly involved.¹⁶² Nefferdorf and each of the four other strikers allegedly involved denied their involvement. Additionally, Costigan and Quinn's girlfriend, who is not an employee of Respondent, corroborated Quinn's and the other strikers' testimony, respectively. Consequently, it comes down to Gertner's word against the testimony of Oliver, Nefferdorf, Terry Smith, Quinn,¹⁶³ Mihalsky, and Costigan. As noted above, in testifying about the Hirschman and O'Farrell (Lewis Jr.) discharges, Gertner compromised his credibility to such an extent that unless corroborated by reliable evidence his testimony, in my opinion, cannot be credited. Here his testimony is not corroborated regarding the identities of the picketers. Respondent has not shown that it had justification for declaring Nefferdorf ineligible for reinstatement.

Three acts of alleged misconduct are cited by Respondent in support of its declaration of ineligibility of Quinones. Allegedly Quinones threatened the life of replacement employee Ramos and on one occasion shot at him. On another occasion allegedly Quinones followed Meidar's car in an harassing manner, and it is alleged that Quinones stole the

¹⁶¹ Regarding the assertion by Feder dealing with her condo, Mercedes and husband, while Respondent does not pursue this on brief, such matter is treated in fn. 156 supra.

¹⁶² The terminal manager Lenkiewicz did not identify the picketers and the rejected transcript of Freytas, R. Exh. 215, does not identify the pickets.

¹⁶³ As noted above, there is a serious question about Quinn's credibility. Here, however, it is not necessary to rely on his testimony alone. Since this was the only alleged misconduct cited by Respondent in support of its discharge of Quinn, Respondent has failed to justify its declaration that Quinn is ineligible for reinstatement.

keys from a Boyd security van. On brief both Respondent and General Counsel contend that the videotape (G.C. Exh. 100) corroborates Ramos and Quinones, respectively. After reviewing the tape on sophisticated equipment it is my opinion that Quinones did not fire a shot at Ramos. The videotape fully corroborates Quinones. Ramos testified that Quinones leaned halfway out of the window when firing the shot; that he, Ramos, slammed on the brakes and that is when Quinones fired the shot and the escort van hit Ramos' truck. Contrary to Respondent's assertion on brief, the camera angle shows the passenger side of the car Quinones was riding in when allegedly the shot was fired. It does not show Quinones leaning halfway out the window. It does not show the escort van hitting Ramos' truck when he put on the brakes. The van was actually in front of Ramos' truck at this point. The videotape does show another of the picketers' vehicles, a red pickup truck, going in front of Ramos' truck. Ramos testified that the red pickup tried to cut him off. At this point the escort van had moved in front of Ramos' truck. Then the car Quinones was in also started to pass Ramos. His truck brake lights go on then off and then Ramos veers toward the car carrying Quinones. After hitting the car, which was some distance from the truck, Ramos does not slow down. Instead he appears to be chasing the car, moving so fast that he is almost unable to negotiate the next turn in the road. To keep the big truck under control at this point Ramos brakes hard. In chasing the car Quinones was in Ramos passed the escort van which then collides with the rear of Ramos' truck as he tries to bring it under control to make the turn. As Respondent points out on brief, Ramos then drives to the police station. Contrary to Respondent's assertion, however, this does not demonstrate that Ramos was the victim in this incident. Ramos appears to have an explosive temper. As he testified, he believed the red pickup truck cut him off. Apparently when the next vehicle occupied by picketers attempted to pass him, he decided he had had enough and they would have to pay a price. The fact that Ramos then went to the police station could demonstrate no more than the cleverness of Ramos or someone else. No police report was introduced which speaks to the condition of the truck when it entered police station grounds. Respondent's evidence consists of Ramos' testimony, a picture sponsored by Ramos, and Lentz' testimony apparently about subsequently seeing some dents on the truck. Ramos was not a credible witness. Lentz' testimony about the condition of the truck when considered alone or when considered with Ramos' testimony would not, in my opinion, justify a conclusion that Quinones fired a shot at the truck operated by Ramos.¹⁶⁴ Ramos' assertion that his life was threatened by Quinones is also not credited.

With respect to the allegation that Quinones followed Meidar's Lincoln in a harassing fashion from the Noblit plant to the Art Museum in Philadelphia, Respondent contends on brief that Quinones' assertion that he followed the car because it was believed that the car might be used for a deliv-

ery is incredible. When he first testified about the incident, Quinones testified that he saw Meidar put something in the trunk of the Lincoln that evening. Later, on cross-examination Quinones testified that he saw John Munro put something into the trunk. The evidence demonstrates that it was the intent of those in the car operated by Quinones to follow Meidar's car on the evening of September 11. The reason given by Quinones is not credited. Meidar's account of what occurred is also not fully credited. Meidar had a tendency to exaggerate. Consequently, I cannot conclude that Quinones drove in a harassing manner. Munro impressed me as being a very aggressive individual.¹⁶⁵ When he concluded that he could not get away from the car operated by Quinones it would not be beyond him to force the car into the median strip and then sit through several traffic light changes hoping that the occupants of the car operated by Quinones would tire and give up. When they did not, the occupants of the Meidar car summoned a policeman at the Art Museum. The fact that Quinones followed Meidar's car in and of itself is not a sufficient justification for discharging Quinones.

Guard Small is credited with respect to his testimony that Quinones took the keys from the Boyd van.¹⁶⁶ It was a harassing tactic; it was not shown that Quinones attempted to use the keys to take the van at that time or subsequently. Apparently all agree that this was a violent strike. There appears to have been misconduct on both sides with some of it being pretty severe. When viewed in this context Quinones' act, while clearly wrong, is trivial in comparison and can best be described as a moment of animal exuberance. In my opinion it is not sufficient to warrant a finding that Quinones should not be reinstated to his job.

Gertner's uncorroborated assertions about Terry Smith, to the extent they allegedly were relied on to declare him ineligible for reinstatement, are not credited for the reasons given above. Scotkin asserts that Smith along with Fisher harassed him by following him in a threatening manner. In my opinion Scotkin exaggerated this incident. While at one point Scotkin testified that Fisher and Smith "chased" him and Lichtenfield, he, Scotkin, subsequently testified that Fisher and Smith kept pace and did not run. Following the two supervisors for one-half a block and calling them scabs while not engaging in physical or verbal threats does not warrant a declaration of ineligibility for reinstatement.

For the reason given above, Gertner's uncorroborated assertion about the identities of the picketers who allegedly participated in misconduct regarding a truck going to and at the Consolidated Freightways terminal are not credited. Although, for reasons given above, generally John Munro did not impress me as being a credible witness, his uncorroborated assertion about Farrell threatening a customer of Noblit is credited. This occurred on the first day of the strike and the picketers most likely would not at that point in time be well versed on the "do's and don'ts."¹⁶⁷ Farrell concedes he said something to the customer. Farrell, who underwent brain surgery for cancer, did not hesitate, as dem-

¹⁶⁴ General Counsel argues on brief that Respondent's failure to discipline Ramos for an alleged assault on another car, operated by a union member, for which he was arrested and charged, demonstrates disparate treatment of the strikers and strike replacement employees and supports the conclusion in this case and others that Respondent terminated the striking employees for their protected concerted activity rather than the alleged incident of misconduct.

¹⁶⁵ One need only review the videotape of the September 25 incident in front of the police station to determine how aggressive this man can be.

¹⁶⁶ Fisher's and Smith's testimony that Quinones did not get out of his car is not credited.

¹⁶⁷ Fisher testified that 2 days later he went to the union hall to be instructed on ambulatory picketing.

onstrated by the videotape of the September 25 incident, to place himself on the front line notwithstanding the risk this posed to his own well being. O'Farrell impressed me as being a person who would say something without first considering the ramifications. I believe that he did threaten the customer with bodily harm the first day of the strike. Consequently, Respondent had sufficient justification for declaring him ineligible for reinstatement.

Similarly, Respondent had sufficient justification for declaring Thomas Fisher ineligible for reinstatement. For the reasons given above, Gertner's uncorroborated assertions regarding Fisher are not credited. And, as indicated above, Scotkin's assertion regarding Fisher did not warrant his discharge. On the other hand, the role Fisher played in what was done to Obergfell on the morning of September 26 was sufficient justification for Respondent declaring him ineligible for reinstatement. Fisher was not a credible witness. His assertion that he was blinded by mace, albeit convenient, was not convincing. Too often on cross-examination, Fisher was shown to be telling something other than the truth. Three men were physically injured, two seriously, during the involved incident. Obergfell is credited. Fisher, who was involved in the injuries suffered by at least one of these men, is not entitled to reinstatement.

Respondent, on brief, submits that Gershkovitz was declared ineligible for reinstatement because he was identified, through a Bell Telephone tracer, as one of the people who had been tying up the switchboard at Noblit with harassing telephone calls; and that, furthermore, Feder identified Gershkovitz as one of the harassing callers. On brief, General Counsel contends that Feder's testimony that Gershkovitz called on two separate days and said, "You old whore, you slut" and "You're dead you old whore and slut," respectively, should not be credited in that while allegedly his was the only voice she could identify of all the harassing calls she received as switchboard operator, and notwithstanding the fact that she was participating in an exercise with the telephone company to identify the harassing callers, she never told anyone at Noblit or at the telephone company that she recognized his voice; that while Gershkovitz did telephone Noblit on October 3 and 4, the credible evidence is that he identified himself as a striker, requested his glasses, and was put on hold forcing him to hang up and call back several times; and that assuming arguendo that Gershkovitz did make such comments to Feder on the telephone, while derogatory, they were not threatening or violent in character and were not sufficient to warrant his termination. *Catalytic, Inc.*, 275 NLRB 97 (1985).¹⁶⁸ The method utilized by the telephone company concerns me in that apparently it is less than exact. Christy, the telephone company's representative, conceded that there was the possibility of at least two errors in the telephone company's findings. Also he pointed out that if all of Noblit's incoming lines were busy at the time

the Noblit switchboard operator designates for receiving an harassing call, the telephone company would not include all the numbers of the incoming calls in its report but rather it would list those who had called once before. Thus, apparently someone that day who was making a legitimate call and who had made a prior legitimate call that day would be listed vis-a-vis the real culprit who was making a one time harassing telephone call within the involved period. The switchboard at Respondent was very busy at the time involved. The chance for error with this approach concerns me. More importantly, however, as pointed out by General Counsel, Feder's testimony is incredible. To engage in an exercise to identify harassing callers and not say anything to anyone at the time about being able to identify one of the callers is absurd. At the involved time Feder would have been the person at Noblit to supply the telephone company with the time of the alleged telephone call and she would have been the one who designated it as an harassing telephone call. Other than these 2 days a month after the strike began, it has not been demonstrated that calls were made from Gershkovitz' telephone to Respondent.¹⁶⁹ Gershkovitz' explanation for the telephone calls on these 2 days is credited. Respondent did not have sufficient justification for denying him reinstatement.

On the basis of the foregoing findings of fact and on the entire record in this proceeding, I make the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent Noblit-AMA, as found supra, and as alleged in the above-described complaint on September 26, 1985, unlawfully discharged the employees named in paragraphs 10(a) and (b) of the complaint in violation of Section 8(a)(1) and (3) of the Act and this unfair labor practices which prolonged the strike converted the strike to an unfair labor practice strike.
4. Respondent Noblit-AMA, as found, supra, and as alleged in the above-described complaint on September 27, 1985, unlawfully discharged William Hirschman and William O'Farrell, Jr. (alias John Lewis Jr.) in violation of Section 8(a)(1) and (3) of the Act.
5. Respondent Noblit-AMA, as found, supra, and as alleged in the above-described complaint, on November 5, 1985, unlawfully discharged the following employees in violation of Section 8(a)(1) and (3) of the Act.

Childs, Elaine	Tumolo, Maria
Costigan, Harry	Nefferdorf, Patrick
Creighton, Blanche	Quinn, Thomas
Hepworth, Brenda	Quinones, Alvaro
Hurvitz, Heather	Smith, Terry
Lupton, Juanita	Robinson, David
Sharp, Melvin	

¹⁶⁸ There the Board concluded that a striker who telephoned a non-striker's home and said to the wife of the nonstriker, "You God damned bitch" did not threaten either the wife's person or her property directly or indirectly, and therefore, the single brief telephone call attributed to the striker did not meet the *Clear Pine Mouldings*, supra, standard justifying the denial of reinstatement. Here if Feder is credited, Gershkovitz said, "You're dead . . ." apparently *Catalytic, Inc.*, supra, would not be controlling. But Feder as noted infra is not credited.

¹⁶⁹ Feder was on the switchboard from mid-September to mid-October 1985. If she recognized Gershkovitz' voice and if he had made harassing calls during this period, it seemingly would follow that she would not have limited her identification to two calls in just 2 days.

6. As alleged in the above-described complaint and as found, *supra*, on or about October 25, 1985 the Union, by letter, acting on behalf of Respondent Noblit-AMA striking employees made unconditional offers to return to work.

7. As alleged in the above-described complaint and as found, *supra*, since on or about October 28, 1985, Respondent Noblit-AMA failed and refused, and continues to fail and refuse, to reinstate the employees named in paragraph 16(a) of the Complaint, as amended, in violation of Section 8(a)(1) and (3) of the Act.¹⁷⁰

8. Respondent Noblit-AMA, as found, *supra*, and as alleged in the complaint issued in 4-CA-15705 dated April 11, 1986, on March 20, 1986, unlawfully discharged Carl Gershkovitz in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Sections 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefore and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent discharged William Hirschman and William O'Farrell, Jr. (alias John Lewis Jr.) in violation of Section 8(a)(1) and (3) of the Act, it is recommended that Respondent offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to them of a sum of money equal to that which they would have earned as wages during the period from the date of their discharges to the date on which Respondent offers reinstatement less their net earnings, if any, during said period, with interest thereon to be computed in the manner set forth in *New Horizons for the Retarded*, T1, 283 NLRB 1173 (1987), and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Having found that Respondent unlawfully discharged a number of specified employees converting the strike to an unfair labor practice strike, and that the strikers made an unconditional offer to return to work, it is ordered that Respondent shall reinstate all of these employees listed in Appendix C (excluding those justifiably declared ineligible for reinstatement on November 5, 1985) who participated in the unfair labor practice strike to their former positions or, if such positions no longer exist, to substantially equivalent positions, without impairment to their seniority and other rights and privileges, dismissing, if necessary, any persons hired as replacements after the offer to return to work was made. If after such dismissals, there are insufficient positions remaining for all the striking employees who are to be reinstated, the available positions shall be distributed among them, without discrimination because of their union membership, activities, or participation in the strike, in accordance with seniority or with some other nondiscriminatory practice. Those

strikers for whom no employment is immediately available after such distribution shall be chosen from the preferential hiring list with priority determined among them by seniority or by another nondiscriminatory practice, and, therefore in accordance with such systems, they shall be offered reinstatement as positions become available and before other persons are hired for such work. It is also recommended that Respondent make the striking employees whole for any loss of earnings they may have suffered or may suffer by reason of Respondent's refusal to reinstate them, by payment to each of a sum of money equal to that he or she normally would have earned during the period from the offer to return to work to the date they are reinstated, absent a lawful justification for Respondent's failure to make an offer of reinstatement. Interest thereon shall be computed in the manner set forth in *New Horizons for the Retarded*, *supra*, and *Isis Plumbing Co.*, *supra*.

It will further be recommended that Respondent preserve and make available to the Board, or its agents, upon request, all payroll records and reports, and all other records necessary and useful to determine the amount of backpay due and rights of reinstatement under the terms of this decision. In addition, Respondent will be directed to post the attached notice.

On these findings of fact and conclusions of law and on the entire record in this proceeding, I issue the following recommended¹⁷¹

ORDER

The Respondent, Noblit Brothers Inc. and AMA Manufacturing Co., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Teamsters Union Local No. 115, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer William Hirschman and William O'Farrell, Jr. (alias John Lewis Jr.) immediate and full reinstatement to their former job, if these jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole, with interest, as provided above, for all losses of pay suffered by them as a result of their discharges.

(b) Offer to employees listed in Appendix C upon their reinstatement, if it has not already occurred, their former jobs or, if they no longer exist, to substantially equivalent jobs without prejudice to their seniority and other rights, dismissing, if necessary, any persons hired as replacements by Respondent on or after October 25, 1985. If, after such dismissals, sufficient jobs are not available for these employees,

¹⁷⁰ As noted above, Carol Anderson, Winifred Wall, Joseph O'Farrell, and Thomas Fisher were justifiably declared ineligible for reinstatement on November 5, 1985.

¹⁷¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

they shall be chosen from the preferential hiring list in accordance with their seniority or other nondiscriminatory practice theretofore utilized by Respondent, and they shall be offered employment before any other persons are hired. Make whole these employees for any loss of earnings they may have suffered or may suffer by reason of Respondent's refusal, if any, to reinstate them in accordance with the terms of this Order, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Post at its Philadelphia, Pennsylvania facility, copies of the attached notice marked "Appendix C."¹⁷² Copies of said notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent's authorized representative, shall be posted by it immediately on receipt in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

¹⁷² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX B

December 2, 1985

(215) 751-2196

HAND DELIVER

Mr. John Bowders
National Labor Relations Board
One Independence Mall
615 Chestnut Street, 7th Floor
Philadelphia, Pennsylvania 19106

Re: *Noblit Brothers, Inc.* (Case 4-CA-15429)

Dear John:

In accordance with our discussions, I am writing to itemize the acts of misconduct which render the 19 former employees named in the above charge ineligible for reinstatement.

1. *Carol Anderson*.—On one occasion during the strike, Ms. Anderson spat on Bill Obergfell (one of Noblit's managers) in his face. On another occasion, Ms. Anderson tres-

passed onto company property and banged on a window of a car in which nonstriking Noblit employee Susan Griffiths was riding. On a third occasion (on or about September 20), Ms. Anderson drove up to nonstriking employees Regina and Dottie Pflaumer as they were getting in their car (which had been marked in the vicinity of the police station being used at that time as the pick-up and drop-off spot) and said: "Oh, I know what your car looks like. Sorry, Dot." When the Pflaumer's returned to their car after work the next working day, they found that acid had been poured on it. Finally, on several occasions Ms. Anderson threatened nonstriking Noblit employees Karen Stojak with death and followed her as she was going home. On one occasion in particular on or about September 25) Ms. Anderson spat on Ms. Stojak in the face.

2. *Elaine Childs*.—Once during the strike, Ms. Childs threatened nonstriking Noblit employee Victor Fontana by pointing to him and saying: "Victor, you are done." On another occasion, she threatened Noblit Vice President Alan Lentz by saying to Mr. Lentz: "We know where you live."

3. *Harry Costigan*.—Mr. Costigan made several antisemitic remarks to Mr. Moshe Meidar, Noblit's President. On another occasion, Mr. Costigan yelled in a threatening manner at Noblit supervisor Alan Scotkin, stating: "Wait until we get back in there."

4. *Blanche Creighton*.—On September 20, 1985, Ms. Creighton ran out into the road in front of a van being driven by Boyd guard Jesus Varela and transporting several Noblit employees. Ms. Creighton threw the contents of a plastic cup at the windshield of the van, forcing it to swerve and almost causing an accident. On a separate occasion, Ms. Creighton threw the contents of a cup at another van while it was delayed at the picket line. Finally, Ms. Creighton on still another occasion kicked a car which was being driven by Noblit manager Ted Haldis and which was attempting to transport several other Noblit employees across the picket line.

5. *Joe Farrell*.—Mr. Farrell was a participant in an incident described in detail in the affidavits of Vladimir Gertner and Hector Freytas which were given to the Board, respectively, on September 24 and 18, 1985. In short, Mr. Farrell and several other striking employees jumped up on the cab of a truck which was being driven by Mr. Freytas and in which Mr. Gertner and another employee, Humberto Bulagado, were riding. The truck had been cut off and stopped in the middle of a street by Teamsters Local 115 Business Agent Jim Oliver. While the truck was stopped, Mr. Farrell and the other striking employees pounded on the cab of the truck for about ten minutes, twisted the side view mirror, and threatened the employees inside with bodily harm and death. After about ten minutes, Mr. Farrell and the other striking employees dispersed, allowing the truck to proceed on to its destination. However, when the truck arrived at its destination (Consolidated Freightways), Mr. Farrell and the others in his group repeated their behavior, jumping up on the cab of the truck and once again threatening the occupants inside. The occupants were held prisoners in the cab of the truck for about 30 minutes, until the police arrived. On another occasion, Mr. Farrell threatened a Noblit customer (the driver of a brown Ford Pinto) with bodily harm. (See affidavit of John Munro given to the Board on September 20, 1985). Finally, Mr. Farrell kneed Andy Munro in the groin

at the 26th Precinct police station on September 25, leading to the fight that broke out on that date.

6. *Tom Fisher*.—Mr. Fisher engaged in numerous serious acts of misconduct during the strike. First, he participated in the brutal and unprovoked assault on Noblit manager William Obergfell on September 26, 1985 that was described in Mr. Obergfell's September 27 affidavit to the Board. Second, Mr. Fisher was one of the participants along with Mr. Farrell in the incident in which several striking Noblit employees threatened and imprisoned Messrs. Gertner, Freytas and Bulagado when they were attempting to go to Consolidated Freightways. See paragraph #5 above. Third, Mr. Fisher once tailgated Mr. Gertner as he was driving home from work one evening, and followed him up Interstate 95. Fourth, Mr. Fisher once spat on a car being driven by nonstriking Noblit employee Eddie Lichtenfield as it was leaving the plant. Fifth, Mr. Fisher (accompanied by fellow striker Terry Smith) followed nonstriking employees Alan Scotkin and Eddie Lichtenfield in a threatening manner, criss-crossing the street after them, as they attempted to go to their cars to go home from work after being dropped off at the drop-off point. Finally, Mr. Fisher was a co-conspirator in the brutal assault on the rented Hertz/Pennske truck being driven by Noblit employee Joe Robinson on September 13, 1985. As you may recall, on that occasion, two windows of Mr. Robinson's truck were smashed. In addition, one Teamster Local 115 member (Harold Fisher) attempted to smash the window of the escort van being driven by Boyd Security guard Anderson Small. While at the present time Noblit does not have evidence that Mr. Tom Fisher himself swung any of the objects that caused or attempted to cause the damage to the vehicles, he provided transportation to one of the assailants and was physically present while this violence occurred.

7. *Brenda Hepworth*.—Ms. Hepworth is believed to have made repeated phone calls to the Noblit switchboard, thereby tying up the telephone lines and impeding Noblit's ability to conduct its business during the strike.

8. *Heather Hurvitz*.—On one occasion, Ms. Hurvitz yelled to nonstriking employee Stan Scotkin: "Don't sleep too lightly tonight, sucker." The next morning, Mr. Scotkin found that the tires on his car had been flattened. On another occasion, nonstriking Noblit employee Sandy Fedder was told by Ms. Hurvitz words to the effect that she was going to lose her condominium and her Mercedes. Finally, Ms. Hurvitz is also believed to have been responsible for tying up the switchboard through repeated telephone calls.

9. *Juanita Lupton*.—Ms. Lupton assaulted Boyd Security guard John Munro on September 25, 1985, in the presence of nonstriking Noblit employees.

10. *Warren Nash*.—Mr. Nash participated in the blockage of an Overnight Transport truck and, when the truck attempted to enter the property, jumped up on the side of the truck, threw open the door and took a swing at the driver.

11. *Pat Nefferdorf*.—First, Mr. Nefferdorf, along with Messrs. Farrell and Fisher, participated in the assault on and threats to Messrs. Gertner, Freytas and Bulagado on September 6, while the latter three employees were on their way to and at Consolidated Freightways. See paragraph #5 above. Second, Mr. Nefferdorf threatened Mr. Gertner on several other occasions. Third, on or about September 11, Mr. Nefferdorf followed nonstriking Noblit employee Willie Faulk across the Tacony-Palmyra Bridge and threatened him

with death while Mr. Faulk was stopped at the toll booth. Finally, on September 25, 1985, Mr. Nefferdorf assaulted John Munro and, during the course of the ensuing struggle, stole his black address book and a \$26,000 check out of Mr. Munro's jacket pocket. That address book had the phone numbers of friends and family members of the Munro's, who thereafter began receiving threatening phone calls.

12. *Tom Quinn*.—Mr. Quinn was a participant in the September 6th incident along with Messrs. Farrell, Fisher and Nefferdorf, involving nonstriking Noblit employees Gertner, Freytas and Bulagado. See paragraph #5 above.

13. *Alvaro Quinones*. As I am sure you are aware, Mr. Quinones shot at nonstriking Noblit employee Ramon Ramos on or about September 26, 1985. Mr. Quinones also threatened to kill Mr. Ramos and his family. In addition, Mr. Quinones was the driver of a car which, on September 11, 1985, attempted to cut off Noblit President Moshe Meidar and force him off the road as he was driving home from work. Finally, Mr. Quinones stole the keys from the escort van driven by Boyd Security guard Anderson Small on September 13, 1985, during the incident in which Local 115 pickets smashed the windows of Joe Robinson's truck.

14. *David Robinson*.—Mr. Robinson once threatened to beat up Vladimir Gertner.

15. *Rosa Santos*.—Ms. Santos on one occasion falsely accused nonstriking Noblit employee Ramon Ramos of exposing himself to her as he was driving a truck into the Noblit property. As a result of this accusation, Mr. Ramos was arrested, handcuffed and taken to the police station, much to his embarrassment. However, when Ms. Santos was told by the police that in order to press charges she would have to repeat her accusation under oath, she recanted her accusation, at which point Mr. Ramos was finally released from custody. Ms. Santos was also involved in the harassment of Karen Stojak described in paragraph XI above. Ms. Santos and Ms. Anderson both followed Ms. Stojak during the incidents in which Ms. Anderson threatened Ms. Stojak and spat on her.

16. *Melvin Sharp*.—On September 26, 1985, Melvin Sharp poured ketchup on nonstriking Noblit employee Gil Sadowski, while Mr. Sadowski was in a restaurant having breakfast before being picked up to be taken to work. As a result of this conduct, Mr. Sadowski quit his employment with Noblit. On the same day, Mr. Sharp was seen as part of a mob chasing several nonstriking Noblit employees at the pick-up point on September 26th. Mr. Sharp was seen carrying a stick (approximately two feet long) in his hand. One of the Noblit employees being chased fell to the ground and hurt both his knees and his arm, and had to lose several days from work because of these injuries.

17. *Terry Smith*.—Mr. Smith was a participant, along with Messrs. Farrell, Fisher, Nefferdorf and Quinn, in the threats, imprisonment and assault of Messrs. Gertner, Freytas and Bulagado on September 6. See paragraph #1 above. On another occasion Mr. Smith (accompanied by Mr. Fisher) followed nonstriking Noblit employees Alan Scotkin and Eddie Lichtenfield in a threatening manner when they were going to their cars near the pick-up point to go home after work. See paragraph X6 above. Finally, Mr. Smith is one of the persons who participated in the attack on the truck being driven by nonstriking Noblit employee Joe Robinson on September 13, 1985.

18. *Maria Tumolo*.—Ms. Tumolo frequently yelled antisemitic remarks to Mr. Moseh Meidar, the President and owner of Noblit.

19. *Winifred Wall*.—Ms. Wall threatened nonstriking Noblit employees Dottie and Regina Pflaumer on numerous occasions such as by saying: “We know where you live. We’re going to get you.” On one morning, she said to Dottie Pflaumer: “We will get your grandson, Clint, at St. Cecilia’s School.” She also told Regina Pflaumer: “You’ll pay for this. We will see what happens when we get our jobs back.”

Ms. Wall also threatened Susan Fedder that she would “get” her.

In addition to these specific incident, all of the 19 former employees participated in the unlawful blockage of ingress and egress of vehicles at the Noblit plant and yelled obscenities to the occupants of the vehicles while they were unlawfully detained at the picket line.

Very truly yours,

Nicholas N. Price

FOR SCHNADER, HARRISON, SEGAL & LEWIS